SUPREME COURT OF THE UNITED STATES.

No. ~~254.~~ 183. 71.

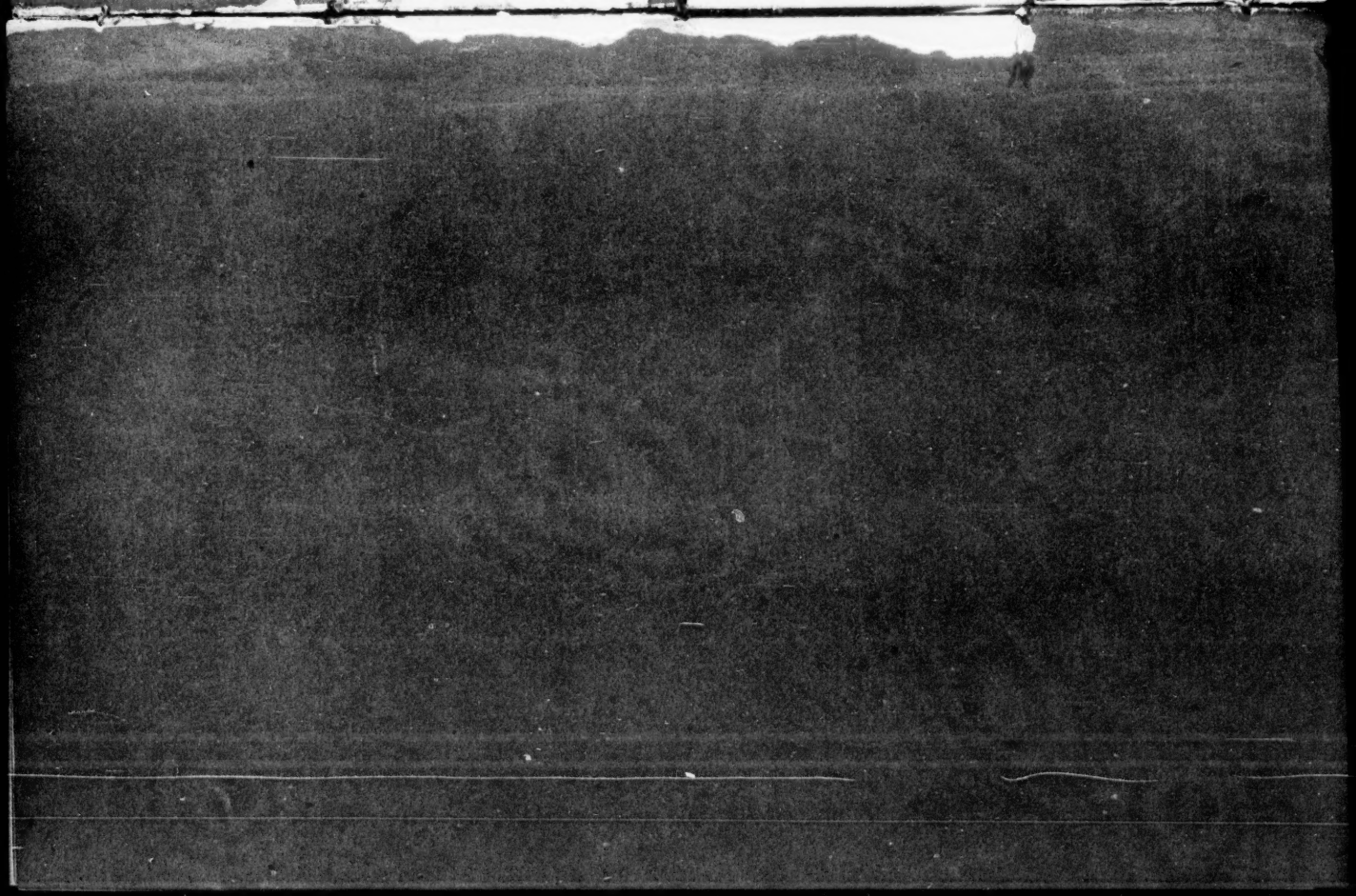
JAMES C. STONE, APP'T,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

GOVERNMENT PRINTING OFFICE.



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No. 254.

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1 Pleas before the circuit court of the United States within and for the district of Kansas, on the seventh day of November, in the year of our Lord one thousand eight hundred and sixty-two.

Be it remembered that heretofore, to wit, on the 27th day of August, A. D. 1862, the United States of America filed in the office of the clerk of the circuit court of the United States for the district of Kansas their bill of complaint, in the words and figures following, to wit:

To the judges of the circuit court of the United States for the district of Kansas:

The United States of America bring this their bill against John Conner, Ne-con-ne-con, and Henry Tiblow, all residents of the county of Leavenworth, citizens of the State of Kansas, and members of the Delaware nation and tribe of Indians, and against James C. Stone, who is a resident of the city of Leavenworth, and a citizen of the State of Kansas.

And thereupon your orators complain and say that, by the first article of the treaty made and concluded at the city of Washington, on the sixth day of May, A. D. 1854, between George W. Manypenny, commissioner on the part of the United States, and cer-
2 tain delegates of the Delaware tribe of Indians, which treaty was ratified by the Senate of the United States on the eleventh day of July, A. D. 1854, there was reserved as a permanent home for the said tribe that part of their country lying east and south of a line beginning at a point on the line between the Delawares and half-breed Kansas, forty miles in a direct line west of the boundary between the Delawares and the Wyandotts; thence north ten miles; thence in an easterly course to a point on the south bank of Big Island creek, which shall also be on the bank of the Missouri river, where the usual high-water line of said creek intersects the high-water line of said river.

And your orators, further complaining, say that on the thirteenth day of May, A. D. 1860, the said tribe of Delaware Indians made and entered into another treaty with the said United States, which said treaty was ratified by the Senate of the United States on the 22d day of August, A. D. 1860, and which said treaty contains the following article:

"ARTICLE VII. In consideration of the long and faithful services of the chiefs of the Delaware nation, and of their interpreter, who is also a member of the nation, it is further agreed that the said chiefs and interpreter shall have allowed to each a tract of land to be se-
lected by themselves, and shall receive a patent in fee-simple
3 therefor from the President of the United States, viz: John Conner, principal chief, six hundred and forty-acres; Sarcox-ie, chief of the Turtle band, three hundred and twenty acres; Rock-a-to-who, chief of the Turkey band, three hundred and twenty

acres; Ne-con-he-con, chief of the Wolf band, three hundred and twenty acres, and Henry Tiblow, interpreter, three hundred and twenty acres. The lines of each tract to conform to the legal subdivision of survey. It is further agreed that, from the money as paid the Delaware tribe of Indians in accordance with article numbered ten of this treaty, the chiefs of said tribe of Indians shall appropriate one thousand five hundred dollars as the annual salary of the councilmen of the said tribe of Indians."

And your orators, further complaining, say that on the thirteenth day of February, A. D. 1862, there was recorded in the office of register of deeds of Leavenworth county, State of Kansas, in book S., pages 103 and 104, an instrument purporting to be a conveyance executed February 12th, A. D. 1862, by said John Conner and one Charlotte Conner, to said James C. Stone, of the following real estate alleged to have been selected by the said John Conner in pursuance and by virtue of the said seventh article of the treaty last
4 hereinbefore mentioned and referred to, to wit: The southwest quarter of the northwest quarter of section number twenty-three (23;) the southwest quarter of said section twenty-three (23;) the southeast quarter of the northeast quarter of section number twenty-two (22;) the east [half of the southeast quarter] and the southwest quarter of the southeast quarter of said section twenty-two (22;) lots numbered four (4,) five (5,) six (6,) and seven (7,) in section twenty-six (26,) and lots numbered three (3) and four (4) in section twenty-seven (27,) all in township eight (8) south, of range twenty-two (22,) east of sixth principal meridian, Kansas, containing six hundred and forty-seven and twenty hundredths ($647\frac{20}{100}$) acres; and on the same day there was recorded in the same office in the same book, on pages 104 and 105, an instrument purporting to be a conveyance executed February 12th, A. D. 1862, from said Henry Tiblow and one Mary Ann Tiblow to the said James C. Stone, of the following real estate alleged to have been selected by the said Henry Tiblow in pursuance and by virtue of the said seventh article of the treaty last above mentioned, viz: The southeast quarter of section numbered twenty-three (23;) lots numbered three (3,) four (4,) of section twenty-four (24;) and lot numbered four (4,) of section numbered twenty-five (25,) all in township number eight (8) south, of range
5 number twenty-two (22,) east of sixth principal meredian, Kansas, containing three hundred and twenty-nine $\frac{20}{100}$ ($329\frac{20}{100}$) acres; and on the same day there was recorded in the same office in the same book, on pages 105 and 106, an instrument purporting to be a conveyance, executed February 12th, 1862, from said Ne-con-he-con and one Ne-la-che-la-qua to the said James C. Stone, of the following real estate alleged to have been selected by the said Ne-con-he-con in pursuance and by virtue of the said seventh article of the treaty herein last before mentioned, viz: The northeast quarter of section twenty-three (23;) the east half [of the northwest quarter] and northwest quarter of the northwest quarter of said section twenty-three (23,) and lot numbered two (2) of section twenty-four (24,) all in township number eight (8) south, of range number twenty-two (22,) east of the sixth principal meridian, Kansas, containing three hundred

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And your orators, further complaining, say that on the thirteenth day of February, A. D. 1862, there was recorded in the office of register of deeds of Leavenworth county, State of Kansas, in book S., pages 103 and 104, an instrument purporting to be a conveyance executed February 12th, A. D. 1862, by said John Conner and one Charlotte Conner, to said James C. Stone, of the following real estate alleged to have been selected by the said John Conner in pursuance and by virtue of the said seventh article of the treaty last
4 hereinbefore mentioned and referred to, to wit: The southwest quarter of the northwest quarter of section number twenty-three (23;) the southwest quarter of said section twenty-three (23;) the southeast quarter of the northeast quarter of section number twenty-two (22;) the east [half of the southeast quarter] and the southwest quarter of the southeast quarter of said section twenty-two (22;) lots numbered four (4,) five (5,) six (6,) and seven (7,) in section twenty-six (26,) and lots numbered three (3) and four (4) in section twenty-seven (27,) all in township eight (8) south, of range twenty-two (22,) east of sixth principal meridian, Kansas, containing six hundred and forty-seven and twenty hundredths ($647\frac{20}{100}$) acres; and on the same day there was recorded in the same office in the same book, on pages 104 and 105, an instrument purporting to be a conveyance executed February 12th, A. D. 1862, from said Henry Tiblow and one Mary Ann Tiblow to the said James C. Stone, of the following real estate alleged to have been selected by the said Henry Tiblow in pursuance and by virtue of the said seventh article of the treaty last above mentioned, viz: The southeast quarter of section numbered twenty-three (23;) lots numbered three (3,) four (4,) of section twenty-four (24;) and lot numbered four (4,) of section numbered twenty-five (25,) all in township number eight (8) south, of range
5 number twenty-two (22,) east of sixth principal meredian, Kansas, containing three hundred and twenty-nine $\frac{20}{100}$ ($329\frac{20}{100}$) acres; and on the same day there was recorded in the same office in the same book, on pages 105 and 106, an instrument purporting to be a conveyance, executed February 12th, 1862, from said Ne-con-he-con and one Ne-la-che-la-qua to the said James C. Stone, of the following real estate alleged to have been selected by the said Ne-con-he-con in pursuance and by virtue of the said seventh article of the treaty herein last before mentioned, viz: The northeast quarter of section twenty-three (23;) the east half [of the northwest quarter] and northwest quarter of the northwest quarter of said section twenty-three (2 ,) and lot numbered two (2) of section twenty-four (24,) all in township number eight (8) south, of range number twenty-two (22,) east of the sixth principal meridian, Kansas, containing three hundred

and thirty-two (332) acres, all of which said lands, described in said three instruments, are a partition of the military reservation known as Fort Leavenworth, and have been occupied as a military reservation for a long space of time, to wit, for the term of thirty years,
6 and are not included within the boundaries of the permanent home reserved to the said tribe of Delaware Indians, by the first article of the treaty between the United States and said tribe of Delaware Indians, made on the 6th day of May, A. D. 1854, and ratified by the Senate of the United States on the 11th day of July, A. D. 1854, but are situated a long distance north of the north boundary of said permanent home so reserved as aforesaid.

And your orators, further complaining, say that on the third day of January, A. D. 1862, there was issued from the General Land Office of the United States, in favor of the said John Connor, a patent for the lands described in the instrument hereinbefore mentioned as purporting to have been executed by the said John Connor and Charlotte Connor to said James C. Stone, and which patent was recorded in said General Land Office, in vol. 11, on pages 522 and 523; and that on said third day of January, A. D. 1862, there was issued from the said General Land Office, in favor of the said Henry Tiblow, a patent for the lands described in the instrument hereinbefore mentioned, as purporting to have been executed by the said Henry Tiblow and Mary Ann Tiblow to the said James C. Stone, and which patent was recorded in
7 the said General Land Office, in vol 11, on pages 525 and 526; and that on said third day of January, A. D. 1862, there was issued from the said General Land Office, in favor of the said Ne-con-he-con, a patent for the lands described in the instrument hereinbefore mentioned, as purporting to have been executed by the said Ne-con-he-con and Ne-la-che-la-qua to said James C. Stone, and which patent was recorded in the said General Land Office, in vol. 11, on pages 524 and 525. And your orators aver that said patents never were delivered to the said John Connor, Ne-con-he-con, and Henry Tiblow, respectively, but that the same were delivered to, and ever since have been, and now are in the possession of the said James C. Stone. And your orators, further complaining, say that the said John Connor, Ne-con-he-con, or Henry Tiblow, never did, under or by virtue of the said seventh article of the treaty of May 30, A. D. 1860, between the United States and the Delaware Indians, select the lands described in the patents aforesaid, nor any part thereof, nor did they, or either of them, ever request that a patent or patents be issued to them, or either of them, for said lands, or any part thereof.

Your orators further say that the lands, and every part thereof, described in said patents were not and are not subject to selection by the said John Connor, Ne-con-he-con, and Henry Tiblow, or
8 either of them, under and by virtue of the said seventh article hereinbefore referred to; and your orators aver that the said patents, and each of them, were so executed and issued to said John Connor, Ne-con-he-con, and Henry Tiblow, respectively, as aforesaid, without the knowledge of or authority from the Secretary of the Department of the Interior of the United States, and the same were, by the said Secretary, on the 10th day of July, A. D. 1862, revoked

cancelled, and declared null and void, and an order of the revocation of said patents was, on the 26th day of July, A. D. 1862, recorded in the office of the register of deeds of Leavenworth county, State of Kansas, in book "S," on page 626.

And your orators further say that at the time the pretended conveyances aforesaid purport to have been executed to him by the said John Connor, Charlotte Connor, Ne-con-he-con, Ne-la-che-la-qua, and Henry Tiblow, and Mary Ann Tiblow, the said James C. Stone well knew that the said John Connor, Ne-con-he-con, and Henry Tiblow had no title to, or right, claim, or interest in said lands, nor could of right acquire under said seventh article, hereinabove referred to, any right or claim in said lands; and the said Stone also well knew that the said lands never had been selected by said John Connor, Ne-con-he-
9 con, and Henry Tiblow, or either of them; and that the same were not subject to the selection of said persons under the seventh article hereinbefore mentioned.

Wherefore, your orators pray that the said James C. Stone, John Connor, Ne-con-he-con, and Henry Tiblow may be made defendants hereto; that they, and each of them, upon their several corporal oaths, according to their respective knowledge, information, and belief, full, true, direct, and perfect answers make to all and singular the charges and matters aforesaid, as fully in every respect as if the same were here again repeated, and they respectively thereunto particularly interrogated; and that upon the final hearing of this cause, the said patents, so issued as aforesaid, may, by a decree of this honorable court, be declared null, void, and of no effect, and the defendants herein be divested of all title in the said lands; that said James C. Stone may be required to deliver up the said patents that they may be cancelled, and that your orators may have such other and further relief in the premises as the nature of the case shall require, and as to your honors shall seen meet.

Therefore, may it please your honors to grant unto your
10 orators the writ of subpœna issuing out of and under the seal of this court, to be directed to the said defendants, James C. Stone, John Connor, Ne-con-he-con, and Henry Tiblow, commanding them, and each of them, by a certain day and under a certain penalty therein inserted, to appear before your honors in the circuit court of the United States for the district of Kansas, and then and there answer the premises and abide the order and decree of the court.

ROBERT CROZIER,
U. S. Att'y, Solicitor for Complainants.

M. S. ADAMS, *of Counsel.*

And which said bill of complaint is endorsed in words and figures as follows, to wit:

The United States *vs* John Connor, Ne-con-he-con, Henry Tiblow and James C. Stone.

Bill in chancery. Filed August 27, 1862.

JOHN T. MORTON, *Cl'k,*
Pr. N. W. COX, *D. C.*

And thereupon there issued from the office of the clerk of the said court a writ of subpœna in chancery, in the words and figures following to wit:

UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

11 The United States of America to John Connor, Ne-con-he con, Henry Tiblow and James C. Stone, greeting:

We command you, and every of you, appear before our judges of our circuit court of the United States of America for the district of Kansas, at Topeka, in said district, on the first Monday in the month of October next, to answer the bill of complaint of the United States of America, this day filed in the clerk's office of said court, in said city of Topeka, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Kansas to execute.

Witness the Hon. Roger B. Taney, chief justice of the Supreme [SEAL.] Court of the United States, at Topeka aforesaid, this 27th day of August, in the year of our Lord, one thousand eight hundred and sixty-two, and of our independence the eighty-seventh.

JOHN T. MORTON, *Clerk*,
Pr. N. W. COX, *Dept. Clerk.*

MEMORANDUM.—The above-named defendants are notified
12 that unless they enter their appearance in the clerk's office of said court, at Topeka aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

JOHN T. MORTON, *Clerk*,
Per. N. W. COX, *Dept.*

And afterwards, to wit, on the 9th day of September, A. D. 1862, the marshal of the said district of Kansas returned into the office of the clerk of said court the said writ of subpœna, with the following return of his doings thereon endorsed, to wit:

"Rec'd the within writ August 27th, A. D. 1862, and executed the same, by leaving a certified copy of said writ at James C. Stone's usual place of residence, with his wife, Sept. 4th, 1862; also upon John Connor, Henry Tiblow and Ne-con-he-con, parties within named, by delivering to each of them a certified copy of the same, in person, Sept. 8th, 1862.

JAMES L. McDOWELL, *U. S. Marshal*,
Per WM. MEDILL, *Dept.*

And afterwards, to wit, on the 6th day of October, A. D. 1862, the said defendants filed in the office of the clerk of said court their written appearance to the said bill of complaint, in words and fig-
13 ures following, to wit:

UNITED STATES OF AMERICA,
District of Kansas:

In the circuit court of the United States.

THE UNITED STATES
v.
JAMES C. STONE AND OTHERS. } In equity.

The clerk of the above court will please enter the appearance of all of the defendants in the above entitled cause.

SAMUEL A. STINSON, *Solicitor for Defendants.*

Which said appearance so filed is endorsed as follows, to wit:

Filed Oct. 6, 1861.

JOHN T. MORTON, *Clerk.*

And which said appearance was thereupon entered by the clerk in the order book of the said court, as follows, to wit:

At clerk's office, rule day, Monday, October 6, 1862.

THE UNITED STATES OF AMERICA,
vs.
JOHN CONNOR, NE-CON-HE-CON, HENRY TIBLOW, and JAMES C. STONE. } In equity.

Now come the said defendants, by Saml. A. Stinson, esq., their solicitor, and file and enter their appearance in this cause.

JOHN T. MORTON, *Clerk.*

14 And afterwards, to wit, on the 24th day of October, A. D. 1862, the said defendant, James C. Stone, filed in the office of the clerk of said court his answer to the said bill of complaint, in the words and figures following, to wit:

In the circuit court of the United States, ss., sitting in equity.

The separate answer of James C. Stone, one of the defendants to the bill of complaint exhibited by the United States of America, complainant, against this defendant here answering, and John Connor, Ne-con-he-con, and Henry Tiblow.

This defendant, now and at all times hereafter, reserving all manner of benefit and advantage to himself of exception to the many errors and insufficiences in said bill of complaint contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised is material for him to answer, answers and says that the facts in regard to the matters and things set forth in said complainant's bill of complaint are as follows:

15 On the 3d of October, A. D. 1818, the Delaware nation or tribe of Indians was in possession of a large and valuable tract of land, which the said tribe or nation held by virtue of treaty stipulations between said tribe or nation and the United States, which tract of land was in the State of Indiana, and needed by the said

United States for white settlements; and thereupon, by treaty concluded on the said 3d day of October, A. D. 1818, at St. Mary's, in the State of Ohio, the said Delaware nation did, by article first of said treaty, "cede," so said treaty reads, "to the United States all their claim to land in the State of Indiana;" and the United States, in consideration of said cession, by the second article of said treaty, did "agree," so said treaty reads, "to provide for the Delawares a country to reside in upon the west side of the Mississippi, and to guarantee to them the peaceable possession of the same," all parts of which said treaty hereby this defendant specially refers to as if the same were fully incorporated into his answer.

This defendant, further answering, shows that under and by virtue of the said treaty last mentioned, the said Delaware nation or tribe did remove to the country, on the James fork of the White
16 river, in the State of Missouri, where said tribe, (as the said Delawares will hereafter be called in this answer,) continued to reside until the 24th of September, 1829, when the United States selected for them a permanent home west of the Missouri river; and the said tribe having manifested their willingness to remove into said permanent home, a treaty supplemental to that hereinbefore referred to was made between said tribe and the United States, a portion of article first of said treaty being here incorporated for greater certainty and convenience: "It is hereby agreed upon by the parties that the country in the fork of the Kansas and Missouri rivers, extending up the Kansas river to the Kansas line, and up the Missouri river to Camp Leavenworth, and thence by a line drawn westwardly, leaving a space ten miles wide north of the Kansas boundary line for an outlet, shall be conveyed and forever secured by the United States to said Delaware nation as their permanent residence; and the United States hereby pledges the faith of the government to guarantee to said Delaware nation forever the quiet and peaceable possession and
17 undisturbed enjoyment of the same against the claims and assaults of all and every other people whatsoever."

And it was further stipulated by said treaty that, in consideration of the release by said tribe to all the country then occupied by them in the State of Missouri, the United States would pay to them an additional annuity of one thousand dollars, all of which supplementary treaty is begged to be made a part of this answer, as fully as though the same were incorporated herein. This defendant further shows that the boundaries fixed by the Kansas and Missouri rivers are natural boundaries; that the northwestern boundary of the "outlet," so called, was capable of being fixed by actual survey from known and fixed boundaries; that "Camp Leavenworth" was, at the time, an object sufficiently notorious as the place where the troops of the United States had previously encamped. It was not, as its name implies, a fixed and permanent post, or a fortification established by the authorities of the United States; in fact, at the time the treaty was made, there was nothing to designate the site save a few huts and
18 sheds, which had not been occupied by the troops of the United States for many months. In the then condition of the country proposed to be ceded, a mark such as this, though at other times and

under other circumstances obscure and uncertain, was sufficient to make the designation certain. This Camp Leavenworth originated as follows: On the seventh day of March, 1827, Col. Leavenworth, then in command of a regiment of United States troops, was ordered to ascend the Missouri river, and on its left bank, near the mouth of the Little Platte river, and within a range of twenty miles above or below its confluence, to select the site of permanent cantonment, and there to construct comfortable though temporary quarters for four companies of troops; this order purports to have been issued by authority of Major General Brown, of the United States army. Col. Leavenworth afterwards selected what is now the site of what is known as "Fort Leavenworth," being on the *right* bank of the Missouri river, and proceeded to erect sheds and huts sufficient to accommodate the number of men mentioned in his said order. These sheds and huts were of the most temporary character, and were not
19 surrounded or protected by any fortification. They continued to be occupied from time to time by the troops of the United States, up to the month of May, 1829, when they were abandoned, and continued so abandoned up to the month of November, 1829. The facts in regard to the establishment are verified by reference to Senate documents of 33d Congress, second session, executive documents number 58.

This defendant therefore submits that the camp or place of encampment, called in said supplemental treaty Camp Leavenworth, was the point from which the line, running westwardly in said supplemental treaty mentioned, was to be, and should have been, drawn, and that said westwardly line was to be, by the terms of the treaty aforesaid, "a line," *i. e.*, "a right line," and not a number of lines and angles. This, too, was the contemporaneous construction of the treaty, as appears by a sketch or map drawn by Hon. John H. Eaton, Secretary of War at the time said provisions of said supplemental treaty were to be carried into effect, which sketch or map was by him drawn
20 for the guidance and information of the surveyor to be employed to ascertain the lines of the country ceded to the Delaware tribe by said supplemental treaty. This sketch or map, so made, shows a straight line westwardly from the bank of the Missouri river, at said Camp Leavenworth, to the northeasterly corner of said outlet. This map or sketch, this defendant avers, is now in possession of this complainant, and he therefore asks that the same may, by the court, be here ordered to be produced on the trial of this cause; but in default of its production this defendant refers to the same on file in the department at Washington, and prays that the same may be made part of this answer, as though it were hereto annexed; and the same fact also appears from the report officially made by Isaac McCoy, a surveyor appointed to survey said lands by the United States. "It," says McCoy, "has been thought desirable that a tract six miles on the Missouri river, and four miles back, should be secured for this object; accordingly the survey about the garrison has been made with a view to such a reservation, as will be seen by reference to the plat," and also by the accompanying Exhibit "F," a copy of the map
21 made by McCoy, of his said survey, which shows that the main

line of said survey was run, in accordance with his instructions, in a straight line westwardly from Fort or Camp Leavenworth, and that the lines run "with a view to a reserve" were regarded by him simply as a recommendation. The survey so made by McCoy was never in any way approved or ratified by the United States, by the President, or by the Delaware tribe. Neither could this survey, so far as it departs from a straight line in a westwardly direction, have been approved in carrying out the provisions of said supplemental treaty in good faith. This defendant, further answering, says that after the Delaware Indians had entered into the country ceded to them by said supplemental treaty, and after said camp had assumed a character of permanency as a cantonment or unfortified garrison, the United States troops, then permanently occupying the same, occupied a portion of what is now claimed as a military reservation for purposes of pasture and farming, and also occupied in the same way other lands far beyond the limits of the pretended military reserve
22 in said ceded country. From time to time these lands were enclosed in fences and corrals erected upon them, all alike with the tacit consent of the Delaware tribe; and for the use of these lands, so occupied, the United States authorities at Fort Leavenworth paid, up to the year 1854, an annual rent to the Indians; but this defendant avers that none of these fields or corrals were ever made, or any other occupancy of said lands had, until long after the making of said treaty of 1829; and this defendant says that never, from the first occupancy of said premises, as aforesaid, by the United States troops or officers, have the Indians abandoned their claim to said lands, but have always asserted the same. This defendant further says that the encroachments of the officers and soldiers at Fort Leavenworth upon these lands, by the occupancy hereinbefore described, has been gradual; that in 1846 there was not occupied, in that or in any other way, one-tenth of the lands now here in controversy, and even now a large portion of said lands are not occupied in any way. This defendant further shows that the principal settlements of the Delaware
23 Indians, of a permanent character, were some ten miles below Fort Leavenworth; that up to the time of opening a portion of them to settlement, in 1854, the greater part of their country was used by them as a hunting-ground, and there was no motive or object in active resistance to the occupation of a small portion thereof for government purposes, especially when they were recompensed by an annual rent therefor.

And this defendant, further answering, says that thereafterwards the said Delaware tribe of Indians, by treaty with the United States, concluded at the city of Washington on the 6th day of May, A. D. 1854, and ratified on the 11th day of July, 1854, and by the first article of said treaty ceded, relinquished, and quit-claimed to the United States "all their right, title, and interest," so says said treaty, "in and to their country lying west of the State of Missouri, and situate in the fork of the Missouri and Kansas rivers, which is described in the article supplementary to the treaty of October 3d, one thousand eight hundred and eighteen, concluded, in part, on the twenty-fourth of September, one thousand eight hundred and twenty-

24 nine, at Council Camp, on James fork of White river, in the State of Missouri, and finally concluded at Council Camp, in the fork of Kansas and Missouri rivers, on the nineteenth of October, one thousand eight hundred and twenty-nine, and also their right, title, and interest in and to the outlet mentioned and described in said supplementary article, excepting that portion of said country sold to the Wyandott tribe of Indians by instrument sanctioned by act of Congress, approved July twenty-fifth, one thousand eight hundred and forty-eight, and also excepting that part of said country lying east and south of a line beginning at a point on the line between the land of the Delawares and the half-breed Kansas, forty miles in a direct line, west of the boundary between the Delawares and Wyandotts, thence north ten miles, thence in an easterly course to a point on the south bank of Big Island creek, which shall also be on the bank of the Missouri river, where the usual high-water line of said creek intersects the high-water line of said river.

And by said treaty the United States agreed to have said lands so ceded, surveyed, and sold, as is provided in the second article
25 of said treaty, which said second article, as well as all the other articles thereof, are hereby referred to especially, as fully as though they were here incorporated in this answer; and thereafter, in accordance with the provisions of said second article of said treaty, the survey of said ceded country was commenced under the direction of the President of the United States, as provided in said article, which survey, so made, did not conform to the pretended survey of said McCoy in the northern line of said ceded country, near (Fort) Camp Leavenworth, (the country ceded by the treaty of 1854, meaning) as is shown by the accompanying map, which, marked "H," is hereto annexed, and made part of this answer, (the line run by McCoy being shown by a red line, and the line run by the survey of 1854 being shown by a blue line,) and the lands included between the red and blue lines, making about twenty-five hundred acres, were sold by the United States, under said second article, and the proceeds thereof applied to the use and benefit of the Indians as therein provided. In this treaty of 1854, as this respondent submits, the contracting parties ignore the zigzag line run by McCoy, with a view to a reser-
26 vation near Camp Leavenworth, and refer to, and rest upon, as a northern boundary, the line commencing at the Camp, and running westwardly therefrom, as defined in the treaty of 1829.

And this defendant further states that it was distinctly understood by the public authorities of the United States that down to the time of the execution of the above-named treaty of 1854 no reservation of lands for the use of "Camp" Leavenworth, which had then become styled "Fort Leavenworth," had been made. As proof of this, this defendant refers to Executive Doc 33d Congress, 2d session, a part of which, commencing on page 6 and ending on page "8," he copies for convenience of reference:

"QUARTERMASTER GENERAL'S OFFICE,
"*Washington City, July* 11, 1854.

"SIR: Your communication of the 10th instant, with the accompanying copy of the original map of the military reserve at Fort Leaven-

worth, east of the Missouri river, is received. The object of the department is to obtain a plat of the reservation lying on the west side of that river, which I have accordingly to request may now be furnished.

"Very respectfully, your obedient servant,

"THOMAS S. JESSUP,
"*Quartermaster General.*

27 "To JOHN WILSON, Esq.,
"*Commissioner General Land Office, Washington City, D. C*"

"GENERAL LAND OFFICE, *July* 11, 1854.

"SIR: In reply to your communication of this date, requesting a copy of the plat of the military reservation at Fort Leavenworth, on the *west* side of the Missouri river, I have to state that there does not appear to have been any action through this office for reserving lands at that post *west* of the river, but only the portion *east* of the river, opposite the fort, as shown by the map transmitted with my letter of the 10th instant.

"I am, very respectfully, your obedient servant,

"JOHN WILSON,
"*Commissioner*

"Lieut. Col. CHARLES THOMAS,
"*Deputy Quartermaster Gen., in charge War Dept.*"

"*Endorsements on the above.*

"Respectfully referred to the adjutant general.

"It is understood that a reserve was made by order of the President of the United States, within the Indian Territory, west of the Missouri, the site of the present post of Fort Leavenworth; and that the order for the reserve was issued from the Adjutant General's office. Is there a report and survey of the reserve in the office? If there is no evidence of the reserve having been made, we may
28 lose the site with all the improvements.

"July 14, 1854.

"THOMAS S. JESSUP,
"*Quartermaster Gen.*"

"Respectfully returned to the quartermaster general.

"It does not appear, from our examination of the records of this office, that any reservation has ever been made at Fort Leavenworth, on the west side of the Missouri river.

"S. COOPER,
"*Adjutand General.*

"ADJUTANT GENERAL'S OFFICE, *July* 18, 1854."

"Respectfully returned to the adjutant general.

"It is desirable that the lands necessary for military purposes at Fort Leavenworth be formally set apart for military purposes, otherwise they will be seized by squatters, and the public will lose not only the land, but the improvements. I respectfully recommend that the

proper orders be issued for surveys to be made, and that the authority of the President to the land department be obtained to reserve from sale the lands now occupied, and which are considered necessary for military purposes.

"Aug. 3, 1854.

"THOS S JESSUP,
"*Quartermaster General.*"

"Respectfully submitted to the Secretary of War.

"It does not appear to have been the practice of the department to make reservations of land for military purposes within the
29 Indian Territory, the laws regulating trade and intercourse with Indian tribes being in that case sufficient to prevent intrusion. But as the lands in the neighborhood of Fort Leavenworth are now about to be surveyed and brought into market, it is recommended that the land at that post, required for military purposes, be set apart and reserved from sale by the president.

"S. COOPER,
"*Adjutant General.*

"ADJUTANT GENERAL'S OFFICE, *Aug.* 7, 1854."

"Let orders be given to have a survey made and a reservation laid off, including the buildings and improvements, and so much land as is necessary for military purposes, looking to its use as a main depot and cavalry station. A plat will be made, and such a description of the tract given as will enable the Commissioner of the General Land Office to have it marked on the plats of the public lands.

"JEFFERSON DAVIS,
"*Secretary of War.*

"WAR DEPARTMENT, *August* 9, 1854."

30 "ADJUTANT GENERAL'S OFFICE,
"*Washington, August* 11, 1854.

"SIR: By direction of the Secretary of War, you will cause a survey to be made and a reservation laid off, including the buildings and improvements, and so much land as may be necessary for military purposes at Fort Leavenworth, looking to its use as a main depot and cavalry station. A plot of the reservation will be made, and such a description of the tract given as will enable the Commissioner of the General Land Office to have the reservation marked upon the plats of the public lands.

"Very respectfully, your obedient servant,

"S. COOPER,
"*Adjutant General.*

"COMMANDING OFFICER, *Leavenworth.*"

"WAR DEPARMENT,
"*Washington, October* 11, 1854.

"SIR: I herewith enclose a map and field-notes of a survey of a tract of land at Fort Leavenworth to be reserved for military pur-

poses, under an order of the President, dated the 10th instant, and endorsed upon the papers.

"Very respectfully, your obedient servant,

"JEFFERSON DAVIS,
"*Secretary of War.*

"Hon. R. McCLELLAND,
"*Secretary of the Interior.*"

31 This defendant, further answering, says that he is informed, and verily believes, that it is and has been the almost invariable custom of the United States, when they intend to make reservations for military purposes, in country ceded to Indian tribes, specially to reserve those reservations in the treaty by metes and bounds, or other well-defined boundaries.

And this defendant, further answering, says that on the 30th day of May, A. D. 1860, there was concluded between the said Delaware tribe and the United States another treaty, article 1 of which reads as follows: "By the first article of the treaty made and concluded at the city of Washington on the 6th day of May, one thousand eight hundred and fifty-four, between George W. Manypenny, commissioner on the part of the United States, and certain delegates of the Delaware tribe of Indians, which treaty was ratified by the Senate of the United States on the eleventh day of July, one thousand eight hundred and fifty-four, there was reserved, as a permanent home for the said tribe, that part of their country lying east and south of a line beginning at a point on the line between the Delaware and half-breed Kansas, forty miles in a direct line west of the boundary be-
32 tween the Delawares and the Wyandotts; thence north ten miles; thence in an easterly course to a point on the south bank of Big Island creek, which shall also be on the bank of the Missouri river where the usual high-water line of said creek intersects the high-water line of said river; and by the eleventh article of said treaty it was stipulated that at any time hereafter, when the Delawares desire it, and at their request and expense, the President may cause the country reserved for their permanent home to be surveyed, in the same manner as the ceded country is surveyed, and may assign such portion to each person or family as shall be designated by the principal men of the tribe, provided such assignment shall be uniform. The Delawares having represented to the government that it is their wish that a portion of the lands reserved for their home may be divided among them in the manner contemplated by the eleventh article of the treaty aforesaid, it is hereby agreed by the parties hereto that said reservation shall be surveyed as early as practicable after the ratification of these articles of agreement and convention in the same man-
33 ner that the public lands are surveyed, and to each member of the Delaware tribe there shall be assigned a tract of land, containing eighty acres, to include in every case, as far as practicable, a reasonable portion of timber, to be selected according to the legal subdivisions of survey." And it was further provided that after the allotments mentioned in said articles, and certain other specific appropriations should be made, were made, there should be issued for the price and under the

stipulations therein contained to the Leavenworth, Pawnee, and Western Railroad Company a patent for "all their" (meaning said tribe) "land remaining in Kansas." And by the seventh article of said treaty it was provided, as set forth in the bill of complaint herein, as follows: In consideration of the long and faithful services of the chiefs of the Delaware nation and of their interpreter, who is also a member of the nation, it is further agreed that the said chiefs and interpreter shall have allotted to each a tract of land, to be selected by themselves, and shall receive a patent in fee-simple therefor from the President of the United States, viz: John Connor, principal chief, six hun-
34 dred and forty acres; Sar-cox-ie, chief of the Turtle band, three hundred and twenty acres; Rock-a-to-wha, chief of the Turkey band, three hundred and twenty acres; Ne-con-he-con, chief of the Wolf band, three hundred and twenty acres; and Henry Tiblow, interpreter, three hundred and twenty acres, the lines of each tract to conform to the legal subdivisions of survey," which said treaty was ratified by the Senate of the United States on the twenty-second day of August, A. D. 1860, and thereby the said several chiefs above named, and said interpreter, became seized at once of the several quantities of land by the said treaty so allotted to them of the lands of the Delawares in the State of Kansas. And this defendant, further answering, says that on the 14th day of January, A. D. 1861, the said John Connor, for a good and valuable consideration to him in hand paid, by his deed of that date, by him duly signed, sealed, and acknowledged, bargained, sold, and conveyed to said James C. Stone, this defendant, the tract of land or "float" mentioned and described as allotted to him by the article of said treaty hereinbefore referred to; and the said Connor, further,
35 by his said deed, authorised the said James C. Stone, this defendant, to select said lands, all of which will more fully appear by a copy of said deed, which is hereunto annexed, marked "A," and prayed to be made a part of this answer; and this defendant avers that the said Ne-con-he-con, on the ninth day of October, A. D. 1861, by his deed of that date by him duly signed and acknowledged, granted, bargained, sold, and conveyed to said James C. Stone, for a good and valuable consideration, the three hundred and twenty acres so granted and allotted to him, said Ne-con-he-con, by said treaty, and the seventh article thereof, hereinbefore recited, all of which will more fully appear by a copy of said deed which is hereunto annexed, marked "B," and made part of this answer; and this defendant, further answering, shows that on said ninth day of October, A. D. 1861, the said Henry Tiblow, by his deed of that date, by him signed and duly acknowledged, granted, bargained, sold, and conveyed to the said James C. Stone, this defendant, for a good and valuable consideration, the three hundred and twenty acres, so as aforesaid allot-
ted and granted to him by the seventh article of said treaty, as
36 will more fully appear by a copy of said deed which, marked "C," is hereunto annexed, and made part of this answer; and this defendant further shows that prior to the 8th day of November, A. D. 1861, Hon. Caleb B. Smith, Secretary of the Department of the Interior of the government of the United States, decided that all that

portion of what has heretofore been known as the military reserve at Fort Leavenworth, in Kansas, lying south of a direct line drawn westwardly from Cantonment (Fort) Leavenworth to a point ten miles north of the northeast corner of the old Kansas line, and not heretofore surveyed, belonged to the Delaware Indians, and ordered that the same be surveyed; and thereupon the Commissioner of Indian Affairs requested the Commissioner of Public Lands to cause said tract to be surveyed; whereupon Hon. J. M. Edwards ordered Mark W. Delahay, esq., surveyor general of Kansas and Nebraska, to cause such survey to be made; all of which will appear by a copy of said requests and orders which, marked "L," is hereunto annexed and made part of this answer; which survey, according to said in-
37 structions, the said surveyor general caused to be made; and the result thereof is shown by a copy of said survey, which, marked "M," is hereunto annexed and made part of this answer, which survey so made was approved according to law, and includes the lands in controversy in this action, and thereafterwards as set forth in said complainant's bill of complaint. Patents were issued to said John Connor, Henry Tiblow, and Ne-con-he-con, for the several tracts of land mentioned in said bill of complaint, which said patents this defendant now produces here in court, to be exhibited as this honorable court shall desire.

And this defendant, further answering, prays that the accompanying copy of a map of the survey of Isaac McCoy may be made part of this answer, it being attached hereto and marked "F."

And this defendant, further answering, admits that the several conveyances in said bill of complaint to him, alleged to have been recorded in the office of the register of deeds of Leavenworth county, in the State of Kansas, were so recorded, and he avers and charges that each of said conveyances were regularly made by the par-
38 ties by whom they purport to have been made and by them duly acknowledged, and copies of these conveyances he hereunto annexed, marked, respectively, "P," "R," and "S;" all of which he prays may be made part of his answer. And this defendant, further answering, admits that said lands described in said deeds and patents lie some distance north of, and are not a part of the permanent home reserved to the Delaware Indians by the aforesaid treaty of 1854.

And this defendant, further answering, says that the lands in question in this suit have never been occupied at all by *by* the United States for military purposes; but such as have been occupied by the United States have been occupied solely for pastures and farms.

This defendant, further answering, denies that the lands in question in this suit have been occupied as a military reservation for thirty years, or that they have been occupied for any other time or in any other way than as hereinbefore set forth; and he admits that said lands are not included within the boundaries of the permanent home reserved to said tribe of Delaware Indians by the treaty of
39 1854, but they are situated between six and seven miles north of the north boundary of said permanent home. This defendant also admits that the patents aforesaid were never personally de-

livered to the parties in whose names they were issued, but avers that he, as the owner in fee-simple of the premises described in said patents by virtue of the conveyances hereinbefore set forth, did receive the same.

And this defendant further admits that said John Connor, Ne-con-he-con, and Henry Tiblow did not select the lands described in said patents, or request that they, said patents, should be issued, save as they have requested them to be issued in the hereinbefore set forth; but he avers that he, said defendant, selected said lands under and by virtue of his having received conveyances of all the right, title, and interest of said Connor, Ne-con-he-con, and Tiblow under the treaty to make said selections, and to the lands by them to be selected; and as to the averment in said bill that said lands are not subject to selection, this defendant is informed and verily believes that they were so subject. This defendant denies
40 that said patents have ever been revoked, but admits the issuing and recording of the pretended order of revocation, as in said bill alleged.

Wherefore this defendant prays this honorable court that his title to the lands in question in this suit may be confirmed, and for such other and further relief as in equity may seem meet and proper in the premises, and that he be dismissed hence with his costs in this behalf expended.

SAM. A. STINSON,
Solicitor for Def't Stone.

B. F. STRINGFELLOW, *of Counsel.*

UNITED STATES OF AMERICA,
District of Kansas, ss:

James C. Stone, being duly sworn, on oath says he is the defendant making the foregoing answer, and that the matters and things therein stated are true, except as to those matters stated to be on information and belief, and as to those matters he believes it to be true.

J. C. STONE.

Subscribed in my presence and sworn to before me this twenty-fourth day of October, A. D. 1862.

JOHN T. MORTON,
Clerk of Circuit Court U. S., Dist. of Kansas.

41 And which said answer is endorsed in words and figures as follows, to wit:

U. S. circuit court, district of Kansas. United States *v.* James C. Stone *et al.* Answer of Stone.

Filed October 24, 1862.

JOHN T. MORTON, *Clerk.*

The said exhibits referred to in the said answer, and filed therewith, are in words and figures as follows:

EXHIBIT "A."

Know all men by these presents that I, John Connor, principal chief of the Delaware tribe of Indians, living on the Delaware Indian reservations, in consideration of the sum of thirty-two hundred dollars, to me paid by James C. Stone, of Leavenworth City, Kansas Territory, the receipt of which I do hereby acknowledge, do grant, bargain, and sell, unto the said James C. Stone, all my right, title, and interest to a float or tract of land specified in the seventh article of the treaty between the United States and the Delaware tribe of Indians, concluded May 30th, A. D. 1860, ratified Aug. 22d,
42 1860. The character of said float or tract of land is more fully explained by the words of said seventh article of said treaty, and are as follows: "Article 7th. In consideration of the long and faithful services of the chiefs of the Delaware nation, and of their interpreter, who is also a member of the nation, it is further agreed that the said chiefs and interpreter shall have allotted to each a tract of land to be selected by themselves, and shall receive a patent in fee-simple therefor from the President of the United States, viz: John Connor, principal chief, six hundred and forty acres; Sar-cox-ie, chief of the Turtle band, three hundred and twenty acres; Rock-a-to-wha, chief of the Turkey band, three hundred and twenty acres; Ne-con-he-con, chief of the Wolf band, three hundred and twenty acres; and Henry Tiblow, interpreter, three hundred and twenty acres; the lines of each tract to conform to the legal subdivisions of survey;" to have and to hold unto him, the said James C. Stone, his heirs and assigns forever. And whereas I have never yet made the selection of said tract, of land, or located it, or any part thereof, I hereby authorize and give full power to the said James C. Stone, his heirs or assigns,
43 to locate or select the same, and do all, any, or everything, in connexion therewith, that I could myself do; and I hereby do further authorize the President of the United States to issue the patent in the name of the said James C. Stone, his heirs and assigns forever. And I, the said John Connor, principal chief, for myself, my heirs executors, and administrators, do covenant with the said James C. Stone, his heirs and assigns, that I am lawfully seized of an estate in fee-simple in the premises herein conveyed; that I have good right to convey the same; that the said premises are free, and clear of any incu m brance done or suffered by myself, or those under whom I claim; that I will support and maintain the said James C. Stone in the quiet enjoyment of said premises; that I and my heirs will make and execute such other and further assurances as may be necessary for confirming the premises hereby granted to the said James C. Stone, his heirs and assigns; and that I will warrant and defend the said premises against the lawful claims of all persons whomsoever.

In testimony whereof, I hereunto set my hand and seal this 14th day of January, A. D. 1861.

44 JOHN his + mark. CONNOR. [SEAL.]

Signed, sealed, and delivered in presence of—
THOS. B. SYKES,
U. S. Indian Agent.
HENRY TIBLOW,
U. S. Interpreter.

STATE OF KANSAS,
County of Leavenworth, ss:

On this 9th day of October, A. D. 1861, before me, A. F. Callahan, a notary public in and for said county, personally appeared John Connor, principal chief of the Delaware tribe of Indians; and the contents of the above deed being by me read, made known, and explained to him, so that he clearly understood the same, he, the said John Connor, did acknowledge the same to be his own voluntary act and deed, for the uses and purposes therein set forth. Witness my hand and seal this 9th day of October, 1861.

[SEAL.] A. F. CALLAHAN,
Notary Public.

DEPARTMENT OF INTERIOR,
Office Indian Affairs, July 15th, 1862.

I, William P. Dole, Commissioner of Indian Affairs, do hereby certify that the foregoing is a correct copy of a sealed instrument, and the certificate thereto attached, purporting to have been exe-
45 cuted on the 9th day of October, 1861, by Ne-con-he-con, in favor of James C. Stone, as the same appears on file in this office.

WM. P. DOLE,
Commissioner.

DEPARTMENT OF INTERIOR,
July 15th, 1862.

I, Caleb B. Smith, Secretary of the Interior, do hereby certify that William P. Dole, whose signature is attached to the foregoing certificate, was, at the date of signing the same, Commissioner of Indian Affairs, and that full faith and credit are due all his official acts.

In testimony whereof, I have hereunto set my hand and caused to be affixed the seal of said department. Done at the city of Washington, in the District of Columbia, the day and year above written.

[SEAL.] CALEB B. SMITH,
Secretary of Interior.

Endorsed: Filed October 24, 1862.

JOHN T. MORTON, *Clerk.*

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EXHIBIT "B."

Know all men by these presents that I, Ne-con-he-con, a chief of the Delaware tribe of Indians, of Leavenworth, Kansas, in consideration of the sum of two thousand dollars, to him in hand paid by James C. Stone, of the same county and State, the receipt
46 whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey, and assign, to the said James C. Stone, his heirs and assigns forever, the float or head-right of three hundred and twenty acres of land, and the land which may be located therewith, to which I am entitled under the provisions of the seventh article of the treaty between the United States and the said Delaware tribe of Indians, made and concluded on the 30th day of May, A. D. 1860, hereby authorizing the said Stone, his heirs or assigns, or his or their attorney, to select and locate said land, and authorizing and requesting the proper officers of the government of the United States to issue to him, his heirs or assigns, a patent for the same when so located and selected. But the conveyance of the said float or head-right, and of the land to be located therewith, shall not abrogate or annul any former selection under the said float made by me, or any conveyance by me to the said James C. Stone, except with the consent of the said Stone, his heirs or assigns.

In witness whereof, I, the said Ne-con-he-con, have hereunto set my hand and seal, in the county and State aforesaid, this ninth day of October, A. D. 1861.

47 NE-CON $\overset{\text{his}}{+}_{\text{mark.}}$ HE-CON. [SEAL.]

Signed, sealed, acknowledged, and delivered in presence of—
HENRY TIBLOW, *U. S. Interpreter.*
A. F. CALLAHAN.

THE STATE OF KANSAS,
County of Leavenworth, sct:

On this ninth day of October, A. D. 1861, before me, A. F. Callahan, a notary public in and for said county, personally appeared Ne-con-he-con, one of the chiefs of the Delaware tribe of Indians, who is personally known to me to be the identical person whose name is signed to the above deed; and the contents of the same being by me made known, read, and explained to him, so that he clearly understood the same, he, the said Ne-con-he-con, did acknowledge the same to be his own voluntary act and deed, for the uses and purposes therein set forth.

[SEAL.] A. F. CALLAHAN,
Notary Public.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, July 15, 1862.

I, William P. Dole, Commissioner of Indian Affairs, do hereby certify that the foregoing is a correct copy of a sealed instrument,

48 and the certificatet hereto attached, purporting to have been executed on the ninth day of October, 1861, by Ne-con-he-con, in favor of James C. Stone, as the same appears on file in this office.

WM. P. DOLE,
Commissioner.

DEPARTMENT OF THE INTERIOR, *July* 15, 1862.

I, Caleb B. Smith, Secretary of the Interior, do hereby certify that William P. Dole, whose signature is attached to the foregoing certificate, was, at the date of signing the same, Commissioner of Indian Affairs, and that full faith and credit are due all his official acts.

In testimony whereof, I have hereunto set my hand and caused to be affixed the seal of said department. Done at the city of [SEAL.] Washington, in the District of Columbia, the day and year above written.

CALEB B. SMITH,
Secretary.

Said Exhibit "B" is endorsed as follows, to wit: "Filed October 24, A. D. 1862.

"JOHN T. MORTON, *Clerk.*"

EXHIBIT C.

Know all men by these presents that I, Henry Tiblow, a member of the Delaware tribe of Indians, of Leavenworth county,
49 Kansas, in consideration of the sum of two thousand dollars, to him in hand paid by James C. Stone, of the same county and State, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, convey, and assign, to the said James C. Stone, his heirs and assigns forever, the float or head-right of three hundred and twenty acres of land, and the land which may be located therewith, to which I am entitled under the provisions of the seventh article of the treaty between the United States and the said Delaware tribe of Indians, made and concluded on the 30th day of May, 1860, hereby authorizing the said Stone, his heirs or assigns, or his or their attorney, to select and locate the said land, and authorizing and requesting the proper officers of the government of the United States to issue to him, his heirs or assigns, a patent for the same when so located and selected. But this conveyance of the said float or head-right, and of the land to be located therewith, shall not abrogate or annul any former selection under the said float made by me, or any conveyance by me to the said James C. Stone, except with the
50 consent of the said Stone, his heirs or assigns.

In witness whereof, I, the said Henry Tiblow, have hereunto set my hand and seal, in the county and State aforesaid, this ninth day of October, A. D. 1861.

HENRY TIBLOW. [SEAL]

Signed, sealed, and acknowledged and delivered in presence of—
JOHN A. FLIQUEO.
A. F. CALLAHAN.

STATE OF KANSAS, *County of Leavenworth, sct:*

On this ninth day of October, A. D. 1861, before me, A. F. Callahan, a notary public in and for said county, personally appeared Henry Tiblow, a member of the Delaware tribe of Indians, who is personally known to me to be the identical person whose name is signed to the above deed as grantor, and acknowledged the same, after I had duly read, made known, and explained the same so that he clearly understood the same, to be his own voluntary act and deed, for the uses and purposes therein set forth.

[SEAL.] A. F. CALLAHAN,
Notary Public.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, July 15, 1862.

I, William P. Dole, Commissioner of Indian Affairs, do hereby certify that the foregoing is a correct copy of a sealed instrument,
51 and the certificate thereto attached, purporting to have been executed on the ninth day of October, 1861, by Henry Tiblow, in favor of James C. Stone, as the same appears on file in this office.

WM. P. DOLE, *Commissioner.*

DEPARTMENT OF THE INTERIOR, *July* 15, 1862.

I, Caleb B. Smith, Secretary of the Interior, do hereby certify that William P. Dole, whose signature is attached to the foregoiug certifiate, was, at the date of signing the same, Commissioner of Indian Affairs, and that full faith and credit are due his official acts.

In testimony whereof, I have hereunto set my hand and caused to be affixed the seal of said department.

Done at the city of Washington, in the District of Columbia, the day and year above written.

CALEB B. SMITH,
Secretary.

Which said Exhibit "C" is endorsed in words and figures as follows, to wit:

Filed October 24, 1862.

JOHN T. MORTON, *Clerk.*

EXHIBIT "*F.*"

(Here follow two two maps marked original, page 52 and 53.)

54 EXHIBIT *L.*

No. 3161.—(Copy.)

GENERAL LAND OFFICE,
November 9, 1861.

MARK W. DELAHAY, Esq.,
Surveyor General, Leavenworth, Kansas:

Sir: Inclosed herein you will find copy of a communication from the Commissioner of Indian Affairs, dated the 8th instant, upon the

subject of the survey of that part of the Delaware trust lands which have not been heretofore surveyed, owing to their having been included in the survey of the military cantonment, and that part of the Fort Leavenworth military reservation under the President's order of October 10, 1854, copy of which order, together with the accompanying documents, was transmitted by this office to your predecessor under date of October 23, 1854.

The survey ordered by the Hon. Secretary of the Interior on the 7th inst., alluded to in the letter from the Hon. Commissioner of Indian Affairs, you will cause to be made upon the receipt hereof, by extending the boundary line between the Kickapoos and Dela-
55 ware lands southerly, from the mound on Salt creek, per field-notes of the resurvey of that line in 1854, sent to your office with letter of the Com'r of General Land Office, dated April 27, 1855, or from the point of the intersection thereof with the western line of the present Fort Leavenworth military reserve, in section 15, township 8 south, range 22 east, of the 6th principal meridian, to the Missouri river, which will carry out the instruction to John C. McCoy, of June 3, 1830, from the then Secretary of War, in conformity to the express terms of the treaty of Sep. 24, 1829, with the Delawares, and restore to them a tract of land lying south of this line, which the decision of the Hon. Secretary of the Interior regards as guaranteed to them by the terms of that treaty, and which, under the provision of the treaty of May 6, 1854, was ceded by the Delawares to the United States in trust for them.

After thus detaching the tract of land from the southren portion of the military reservation inadvertenly reserved for that purpose by order of the President as aforesaid, you will extend the lines of the public surveys over the Delaware ceded lands from their terminating
56 points on the military reservation in the surveys of 1855, and close them on the treaty line of 1829, which you will have surveyed and marked to the Missouri river, or the point designated by the terms of the treaty as the cantonment.

Upon the return of the survey, and approval thereof, you will designate on the official plats fractional lots within this tract of land by consecutive numbers to those already numbered in the township plat, so that the additional legal subdivisions of the ceded lands may be disposed of by the President in conformity with the 2d article of the treaty with the Delawares of May 6, 1854, U. S. Statutes at Large, vol. 10, p. 1048.

I deem it proper to state, in this connexion, that the lands when thus surveyed will not be liable to pre-emption settlement or locations of any kind, the provisions of the 16th art. treaty May 6, 1854, forbidding the same by virtue of the act of Congress entitled "An act to prevent settlements being made on lands ceded to the United States until authorized by law," approved March 3, 1807, Statutes at Large, vol. 2, p. 445; the 37th section of the act organizing the Territory of Kansas, approved May 30, 1854, vol. 10, p. 290, and by the
57 first section of the act of Congress admitting Kansas into the Union, approved January 29, 1861, which preserve Indian rights to the lands and other property.—(See Laws, 1860 and 61, p. 127.)

You are directed to make immediate arrangements for the survey of the above-mentioned lands, either at so much per lineal mile or per diem, on as economical terms as you can consistently with the correct and faithful execution of the work; the return of the same shall be rendered in the like manner as those of the ceded lands heretofore surveyed and sold for the benefit of the Delawares, and when approved, the account of the survey of the same will be adjusted and reported by this office to the Commissioner of Indian Affairs for payment out of the funds under the control of his office. You are requested to acknowledge the receipt hereof, and state the probable time when you can make the necessary arrangements for the carrying out of these instructions.

I am, very respectfully, your obedient serv't,

(Signed) J. M. EDMUNDS,
Commissioner.

58 (Copy.)

No. 3161. DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs, November 8th, 1861.

SIR: The Secretary of the Interior decided that all that part of what has heretofore been known as the military reserve at Ft. Leavenworth, in Kansas, lying south of a direct line drawn westwardly from Cantonment (Fort) Leavenworth to a point ten miles north of the northeast corner of the old Kansas line, and not heretofore surveyed, belongs to the Delawares, and has ordered that the same be surveyed. I have, therefore, to request that the necessary order may issue from your office to carry said direction into effect, the expense incident thereto to be furnished from funds under the control of this office applicable to that purpose.

Very respectfully, your obedient servant,

WM. P. DOLE,
Commissioner.

Hon. J. M. EDMUNDS,
Com'r Gen'l Land Office.

SURVEYOR GENERAL'S OFFICE,
Leavenworth, Kansas, October 3d, 1862.

I hereby certify that the foregoing transcripts of letters No. 3161—one from Hon. Wm. P. Dole, Commissioner of Indian Affairs, dated Nov. 8th, 1861, and one from Hon. J. M. Edmunds, Commissioner of the General Land Office, dated Nov. 9, 1861—are true copies from the originals on file in this office.

MARK W. DELAHAY,
Surveyor General of Kansas and Nebraska.

59 And which said Exhibit "L" is endorsed as follows:

Copy. 3161. Honorable Wm. P. Dole, Com'r of In. Affairs, Gen. Land Office, directing the survey of that portion of the Dela-

ware trust lands included within the reservation for Fort Leavenworth.

Filed October 26, 1862.

JOHN T. MORTON, *Clerk.* "I."

EXHIBIT "M."

(Here follows map marked original, page 60.)

61 EXHIBIT "P."

Know all men by these presents that John Connor, principal chief of the Delaware tribe of Indians, of Leavenworth county and State of Kansas, in consideration of forty-two hundred dollars, to him paid by James C. Stone, of Leavenworth City and State of Kansas, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, and convey, to the said James C. Stone, his heirs and assigns forever, the following real estate situate in the State of Kansas, Leavenworth county, viz: The southwest quarter of the northwest quarter of section twenty-three, containing forty acres; the southwest quarter of said section twenty-three, containing one hundred and sixty acres; the southeast quarter of the northeast quarter of section twenty-two, containing forty acres; the east half of southeast quarter and southwest quarter of the southeast quarter of said section twenty-two, containing one hundred and twenty acres; lots numbered four, five, six, and seven, in section twenty-six, containing together one huudred and eighty-three acres and seventy-three-hundredths of an acre; and lots numbered three and four, in sec-
62 tion twenty-seven, containing together one hundred and three acres and forty-seven-hundredths of an acre, all being in township eight south, of range twenty-two east, of the sixth principal meridian, in the State of Kansas, and containing in the aggregate six hundred and forty-seven acres and twenty-hundredths of an acre, being the same property conveyed by the United States to the said John Connor by patent dated January 3d, 1862, under the seventh article of the treaty between the United States of America and the Delaware tribe of Indians, made and concluded at Sarcoxieville, on the Delaware reservation, in the then Territory of Kansas, on the thirteenth day of May, A. D. 1860, as ratified on the twenty-second day of August, A. D. 1860, and all the estate, right, title, and interest of the said John Connor, principal chief of the Delaware tribe of Indians, either in law or in equity, of, in, and to the said premises, together with all the privileges and appurtenances to the same belonging: to have and to hold the same to the only proper use of the said James
63 C. Stone, his heirs and assigns forever; and the said John Connor, for himself, his heirs, executors, and administrators, does *does* hereby covenant with the said James C. Stone, his heirs and assigns, that he is the true and lawful owner of the said premises, and has full power to convey the same, and that the title so conveyed is clear, free, and unincumbered; and further, that he will warrant and defend the same against all claim or claims of all persons whatsoever. In witness whereof, the said John Connor and Charlotte

Connor, wife of the said John Connor, who does hereby release all her right and expectancy of dower in the said premises, have hereunto set their hands and seals this twelfth day of February, A. D. 1862.

JOHN his + mark. CONNOR. [SEAL.]

CHARLOTTE her + mark. CONNOR. [SEAL.]

Signed, sealed, and acknowledged in our presence—
THOS. S. GLADDING.
A. F. CALLAHAN.

THE STATE OF KANSAS,
Leavenworth County:

Be it remembered that on this 12th day of February, A. D. 1862, before me, the subscriber, a notary public in and for said county, personally came John Connor and Charlotte Connor, his wife, who are personally known to me to be the same persons who signed the
64 foregoing conveyance as grantors, and acknowledged the signing and sealing thereof to be their voluntary act and deed, for the uses and purposes therein mentioned; and the said Charlotte Connor, wife of John Connor, being examined by me separate and apart from her said husband, and the contents of said deed being *be* made known and explained to her, declared that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith as her act and deed, for the uses and purposes therein mentioned. In testimony whereof, I have hereunto subscribed my name and affixed my notarial seal on the day and year aforesaid.
[SEAL.]

A. F. CALLAHAN,
Notary Public.

Recorded February 13th, 1862, at 10 o'clock a. m.
W. S. VAN DOREN,
Register of Deeds.

STATE OF KANSAS,
Leavenworth County, ss:

I, W. S. Van Doren, register of deeds in and for the county and State aforesaid, do hereby certify that the foregoing is a true copy from the records in my office.

Witness my hand and official seal October 17th, A. D. 1862.
W. S. VAN DOREN,
Register of Deeds.

EXHIBIT "R"

Know all men by these presents that Henry Tiblow, late
65 interpreter for the Delaware tribe of Indians, of Wyandott county and State of Kansas, in consideration of twenty-one

hundred dollars to him paid by James C. Stone, of Leavenworth City and State of Kansas, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, and convey, to the said James C. Stone, his heirs and assigns forever, the following real estate situate in the State of Kansas, Leavenworth county, viz: The southeast quarter of section twenty-three, containing one hundred and sixty acres; lots numbered three and four, of section twenty-four, containing together one hundred and six acres and eighty hundreths of an acre; and lot numbered four, in section twenty-five, containing sixty-two acres and forty-nine hundredths of an acre, all being in townships eight south, of range twenty-two east, of the sixth principal meridian, in the State of Kansas, and containing in the aggregate three hundred and twenty-nine acres and twenty-nine hundredths of an acre, being the same property conveyed by the United States to the said Henry Tiblow by patent dated January 3d, 1862, under the seventh article of the treaty between the United States of America and the Delaware tribe of Indians, made and concluded at
66 Sarcoxieville, on the Delaware reservation, in the then Territory of Kansas, on the thirtieth day of May, A. D. 1860, as ratified on the twenty-second day of August, A. D. 1860, and all the estate, title, and interest of the said Henry Tiblow, late interpreter for the Delaware Indians, either in law or equity, of, in, and to the said premises, together with all the privileges and appurtenances to the same belonging: to have and to hold the same to the only proper use of the said James C. Stone, his heirs and assigns forever; and the said Henry Tiblow, for himself, his heirs, executors and administrators, does hereby covenant with the said James C. Stone, his heirs and assigns, that he is the true and lawful owner of the said premises, and has full power to convey the same, and that the title so conveyed is clear, full, and unincumbered; and further, that he will warrant and defend the same against all claim or claims of all persons whatsoever.

In witness whereof, the said Henry Tiblow and Mary A. Tiblow, wife of the said Henry Tiblow, who does hereby release all her right and expectancy of dower in the said premises, have hereunto set their hands and seals this twelfth day of February, A. D. 1862.

67 HENRY TIBLOW. [SEAL.]

her
MARY A. + TIBLOW. [SEAL.].
mark.

Signed sealed and acknowledged in our presence—
THOS. S. GLADDING.
A. F. CALLAHAN.

THE STATE OF KANSAS,
Leavenworth County:

Be it remembered that on this twelfth day of February, A. D. 1862, before me, the subscriber, a notary public in and for said county, personally came Henry Tiblow and Mary A. Tiblow, his wife, who are personally known to me to be the same persons who signed the foregoing conveyance as grantors, and acknowledged the signing and

sealing thereof to be their voluntary act and deed, for the uses and purposes therein mentioned; and the said Mary A. Tiblow, wife of Henry Tiblow, being examined by me separate and apart from her said husband, and the contents of said deed being by me made known and explained to her, declared that she did voluntarily sign seal and acknowledge the same, and that she is still satisfied therewith as her act and deed, for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto subscribed my name and affixed my notarial seal on the day and year aforesaid.

68 [SEAL.] A. F. CALLAHAN, *Notary Public.*

Recorded February 13th, A. D., 1862, at 10 o'clock a. m.

W. S. VAN DOREN, *Register of Deeds.*

STATE OF KANSAS,
Leavenworth County ss:

I, W. S. Van Doren, register of deeds in and for the county aforesaid, do hereby certify that the foregoing is a true copy from the records in my office.

[SEAL.] W. S. VAN DOREN, *Register of Deeds.*

EXHIBIT "S"

Know all men by these presents that Ne-con-he-con, chief of the Wolf band of the Delaware tribe of Indians, of Leavenworth county and State of Kansas, in consideration of twenty-one hundred dollars, to him paid by James C. Stone, of Leavenworth City and State of Kansas, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, and convey, to the said James C. Stone, his heirs and assigns forever, the following real estate situate in the State of Kansas, Leavenworth county, viz: The northeast quarter of section twenty-three, containing one hundred and sixty acres; the east half of the northwest quarter, and northwest quarter of the northwest

69 quarter of said section twenty-three, containing one hundred and twenty acres; and lot number two, of section twenty-four, containing fifty-two acres; all being in township eight south, of range twenty-two east, of the sixth principal meridian, in the State of Kansas, and containing in the aggregate three hundred and thirty-two acres, being the same property conveyed by the United states to the said Ne-con-he-con by patent dated January 3d, 1862, under the seventh article of the treaty between the United States of America and the Delaware tribe of Indians, made and concluded at Sarcoxieville, on the Delaware reservation, in the then Territory of Kansas, on the 30th day of May, A. D. 1860, as ratified on the twenty-second day of August, A. D. 1860, and all the estate, title, and interest of the said Ne-con-he-con, chief of the Wolf band aforesaid, either in law or in equity, of, in, and to the said premises, together with all the privileges and appurtenances to the same belonging: to have and to hold the same to the only proper use of the said James C. Stone, his heirs and assigns forever;

and the said Ne-con-he-con, for himself, his heirs, executors,

70 and administrators, does hereby covenant with the said James C. Stone, his heirs and assigns, that he is the true and lawful

owner of the said premises, and has full power to convey the same, and that the title so conveyed is clear, free, and unincumbered; and further, that he will warrant and defend the same against all claim or claims of all persons whatsoever. In witness whereof, the said Ne-con-he-con and Ne-la-chi-la-qua Ne-con-he-con, wife of the said Ne-con-he-con, who does hereby release all her right and expectancy of dower in the said premises, have hereunto set their hands and seals this twelfth day of February, A. D. 1862.

NE-CON-HE-CON his + mark. [SEAL.]

NE-LA-CHI-LA-QUA NE-CON-HE-CON her + mark. [SEAL.]

Signed, sealed, and acknowledged in our presence—
THOMAS S. GLADDING.
HENRY TIBLOW.
A. F. CALLAHAN.

THE STATE OF KANSAS,
Leavenworth County, ss:

Be it remembered that on this 12th day of February, A. D. 1862, before me, the subscriber, a notary public in and for said county, personally came Ne-con-he-con and Ne-la-chi-qua Ne-con-he-
71 con, his wife, who are personally known to me to be the same persons who signed the foregoing conveyance as grantors, and acknowledged the signing and sealing thereof to be their voluntary act and deed, for the uses and purposes therein mentioned. And the said Ne-la-chi-qua Ne-con-he-con, wife of Ne-con-he-con, being examined by me separate and apart from her said husband, and the contents of said deed being by me made known and explained to her, declared that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith as her act and deed, for the uses and purposes therein mentioned. In testimony whereof, I have hereunto subscribed my name and affixed my natarial seal on the day and year aforesaid.

[SEAL.] A. F. CALLAHAN,
Notary Public.

Recorded February 13th, A. D. 1862.

W. S. VAN DOREN,
Register of Deeds.

STATE OF KANSAS,
Leavenworth County, ss:

I, W. S. Van Doren, register of deeds for the county and State aforesaid, do hereby certify that the foregoing is a true copy from the records in my office. Witness my hand and official seal October 18, 1862.

W. S VAN DOREN,
Register of Deeds.

And which said Exhibit "S" is endorsed in words and figures as follows, to wit:

Filed October 24, 1862.

JOHN T. MORTON, *Clerk.*

72 And afterwards, to wit, on the 24th day of October, A. D. 1862, the United States of America, complainants herein, by Robert Crozier, esq., United States district attorney, filed in the office of the clerk of said court their replication to answer of the said defendant, James C. Stone, which said replication is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Kansas:

In the circuit court of the United States in and for said district.

THE UNITED STATES
v.
JOHN CONNOR *et al.* } In chancery.

Replication of the United States to the answer of James C. Stone, defendant.

The repliants, saving and reserving to themselves all and all manner of advantage and exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant for replication thereto, saith that they do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the defendants, and that the answer of the said defendant is very uncertain, evasive, and insufficient

73 in the law to be replied unto by these repliants; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true, all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

ROBERT CROZIER,
U. S. Attorney, Sol. for Comp'ts.
W. P. GAMBELL,
Of Counsel.

And which said replication is endorsed in words and figures as follows, to wit:

United States *v.* John Conner *et al.* Replication. Filed October 24, 1862.

JOHN T. MORTON, *Clerk.*

And afterwards, to wit, on the 26th day of October, A. D. 1862, (the said defendant, James C. Stone, having filed in the clerk office of said court the deposition of John G. Pratt, hereinbelow set forth and copied, which deposition had been published in pursuance

of the rules of said court,) the United States of America, com-
74 plainants herein, by the U. S. district attorney, filed in the office of the clerk of said court their written exceptions to the deposition of the said John G. Pratt, which exceptions are in words and figures as follows, to wit:

74 THE UNITED STATES OF AMERICA,
District of Kansas, sct:

Circuit court of said United States in and for said district.

THE UNITED STATES
v.
JOHN CONNOR *et al.* } In chancery.

Exceptions to the deposition of John G. Pratt.

Now come the complainants above named, and except to so much of the deposition of John G. Pratt, filed in this cause, as is referred to below, to wit, commencing with the 9th line, page 2, and ending with "by them," in 12th line, same page.

Commencing with 16th line, page 2, and ending with "rents," in last line, on same page.

Commencing with "the Indians," 19th line, page 3, and ending with "about it," in last line but one, same page.

The whole of the "direct examination resumed."

The complainants except to the above-described portions of
75 said deposition, for the reason that they are incompetent, being hearsay, and not the best evidence in the premises.

ROBT. CROZIER,
Sol. for Comp'ts.

And which said exceptions are endorsed in words and figures as follows, to wit:

"United States *v.* John Connor *et al.* Exceptions to Jno. G. Pratt's deposition. Filed October 26, 1862.

"JOHN T. MORTON, *Clerk.*"

And afterwards, to wit, on the 26th day of October, A. D. 1862, the said parties to this suit filed in the office of the clerk of the said court their written agreement and stipulation, which said agreement and stipulation is in words and figures as follows, to wit:

THE UNITED STATES
v.
JOHN CONNOR and others. } In chancery.

It is hereby stipulated and agreed, by and between the parties to the above-entitled cause, that executive document No. 58, 33d Congress, 2d session, may be read in evidence on the hearing of this cause.

with the like effect that the certified copies of the correspondence and orders therein contained would have if produced in court.

Executive document No. 50, 33d Congress, 2d session, shall,
76 in like manner, and with the like effect, be read in evidence.

So much of the communication of George W. Manypenny, Commissioner of Indian Affairs, to Hon. Robert McClelland, Sec'y of Interior, dated Nov. 9th, 1854, as purports to be extracts from a paper on file in the office of the Commissioner of Indian Affairs, and endorsed "Copy.—Isaac McCoy's survey of Delaware lands," may be read in evidence the same as the original paper might be if properly certified and produced.

It is agreed and admitted that in 1839 a survey of the military tract about Fort Leavenworth was made by Capt. A. R. Johnson, under the orders of the commanding officer, and a map of such survey made and duly filed in the War Department at Washington, from which map the southern boundary of the said military tract appears as originally fixed by Isaac McCoy in 1830, but the western boundary was changed by taking the natural boundary, Salt creek, instead of the geographical line run by Isaac McCoy, which crossed that stream. Copies of this map, together with the report of the survey and field-notes, when procured from the War Department, may be filed, as of this day, as a part of the evidence in this cause. Also the re-
77 port and field-notes of the survey of McCoy on file in any of the departments.

And it is further stipulated that a certificate of the proper officer, in relation to the allowance or payment of any account for rent paid by the quartermaster of Fort Leavenworth to the Delaware Indians for rent of the lands in controversy, may be at any time produced and filed as evidence in this cause; and, in case of appeal, the same may be used in the Supreme Court.

It is further agreed that on the (5th) fifth day of June, 1829, the buildings at Camp Leavenworth consisted of temporary cabins and sheds, which were not occupied by the United States troops from that time until the 8th of November, 1829, from which latter date that place has been constantly occupied by United States troops. The cabins and sheds had been built and occupied by United States troops at least a year preceding June 5th, 1829.

It is further stipulated and agreed that the copies of papers and maps annexed to and made part of defendant Stone's answer may be read in evidence the same as the originals might be.

R. CROZIER,
U. S. Att'y, Solicitor for Complainants.
SAM. A. STINSON,
Solicitor for Defendants.

78 It is further agreed that the lands between the red and blue lines shown on Exhibit "H" were surveyed and sold under the treaty of 1854, by order of the President, for the benefit of the Delawares.

R. CROZIER, *Sol'r for Comp't.*
SAM. A. STINSON, *Sol'r for def't Stone.*

And which said stipulation or agreement was endorsed in words and figuresas follows, to wit: "United States *v.* John Connor. Agreement. Filed, October 26th, 1862.

"JOHN T. MORTON, *Clerk.*"

And afterwards, to wit, at a term of the said circuit court of the United States of America for the district of Kansas, begun and held in said district on Monday, the 13th day of October, A. D. 1862, the Hon. Archibald Williams, one of the judges of said court presiding, and on the twenty-second judicial day, said term, this cause came on to be heard, and the bill of complaint, the answer of the said defendant, James C. Stone, and the replication of the said complainants being read, the said complainants, the United States of America, by Robert Crozier, esq., United States district attorney, offered
79 in evidence the following documents, papers and maps, the same being in words, figures, lines and plats, as set forth below, to wit:

Evidence on the part of the complainants.

1—"Paper No. 1."

DEPARTMENT OF THE INTERIOR,
Washington, August 18th 1862.

I hereby certify that the within papers, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, are true copies of the originals now on file in this department.

{ Seal of Dept. of Interior. }

CALEB B. SMITH,
Secretary of the Interior.

1.—(Copy.)

DEPARTMENT OF THE INTERIOR,
June 11th, 1862.

SIR: I learn by your communication of the 2nd instant that on the third day of January last a patent was issued to John Connor, of the Delaware tribe of Indians, for the following described tracts of land, viz: the southwest $\frac{1}{4}$ of the northwest $\frac{1}{4}$ and the southwest $\frac{1}{4}$ of section 23; the southeast $\frac{1}{4}$ of the northeast $\frac{1}{4}$, the east $\frac{1}{2}$ and southwest $\frac{1}{4}$ of the southeast $\frac{1}{4}$, of section 22; lots 4, 5, 6, and 7, in section 26, and lots 3 and 4, in section 27; all in township 8 south, of range 22 east, of the 6th principal meridian in Kansas.

Also, on the same day, a patent was issued to Ne-con-he-con, of the same tribe, for the following described lands, viz: The north-
80 east $\frac{1}{4}$ and the east $\frac{1}{2}$, and the northwest $\frac{1}{4}$ of the northwest $\frac{1}{4}$ of section 23, and lot No. 2, of section 24, of same township and range; and on the same day a patent was issued to Henry Tiblow for the following described lands, viz: the southeast $\frac{1}{4}$ of section 23, and lots 3 and 4, in section 24, and lot 4 in section 25, of same township and range. These patents purport to have been issued to cover selections of lands alleged to have been made by the parties above named, under the seventh article of the treaty between the United States and the Delaware Indians, ratified on the 22d day of August, 1860. These patents were executed without the knowledge of this department, and without any authority from me; and un-

til the day on which your letter bears date, I had no information that such patents had been issued. The grantees named in the patents had no title to, or right, claim or interest in, said lands; they had no authority to select the said lands under or by virtue of any provisions contained in said treaty.

I transmit herewith letters from two of said grantees, asserting that they never selected said lands under said treaty, and never requested that a patent should be issued for them, and that the
81 patents have never been delivered to them. The patents to the persons above named, for the lands before described, have been issued without legal authority, and are therefore void, and they are hereby revoked and cancelled, and declared null and void. You will please enter upon your records an order revoking and cancelling said patents, and declaring them null and void. You will hereafter issue no patents to any person for said land, or any portion of them, or for any of the residue of the lands embraced in said survey.

Very respectfully, your ob't servant,

(Signed) CALEB B. SMITH,
Secretary of the Interior.

JAMES M. EDMUNDS, Esq.,
Comm'r Gen'l Land Office.

(Copy.)

WASHINGTON CITY, D. C., *June 10th*, 1862.

SIR: The treaty between the United States and the Delaware tribe of Indians, ratified on the 22d of August, 1860, provided, in the 7th article, that there should be allotted to me a tract of land of six hundred and forty acres, to be selected by myself, and for which I was to receive a patent. I am informed that a patent was issued in January last to me, from the General Land Office, for the following described lands, viz: The southwest $\frac{1}{4}$ of the northwest $\frac{1}{4}$, and
82 the southwest $\frac{1}{4}$ of section 23; the southeast $\frac{1}{4}$ of the northeast $\frac{1}{4}$; the east $\frac{1}{2}$ and southwest $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of section 22; lots 4, 5, 6 and 7, in section 26; and lots 3 and 4, in section 27; all in township 8 south, of range 22 east, of the 6th principal meridian, in Kansas.

I wish now to notify you that I never selected said lands under said treaty; that I never requested a patent for the same; that no patent has ever been delivered to me for said lands; and it is my wish, that if any patent has been issued in my name, that the same shall be rescinded and cancelled, as I do not wish to select said land under said treaty.

Yours, respectfully,

his
JOHN + CONNOR.
mark.

Witness: F. JOHNSON, *U. S. Ind. Agent.*
ROBT. J. E. JONNYCAKE, *A. U. S. Int.*
A. S. H. WHITE.

To Hon. C. B. SMITH, *Secretary of the Interior.*

(Copy.)

WASHINGTON CITY, D. C., *June 10th*, 1862.

SIR: The treaty between the United States and the Delaware tribe of Indians, ratified on the 22d of August, 1860, provided, in the seventh article, that there should be alloted to me a tract of land
83 of three hundred and twenty acres, to be selected by myself, and for which I was to receive a patent. I am informed that a patent was issued in January last to me, from the General Land Office, for the following described lands, viz: The northeast $\frac{1}{4}$ and the east $\frac{1}{2}$ and the northwest $\frac{1}{4}$ of section 23, and lot No. 2 of section 24, in township 8 south, of range 22 east, of the 6th principal meridian, in Kansas.

I wish now to notify you that I never selected said lands under said treaty; that I never requested a patent for the same; that no patent has ever been delivered to me for said lands; and it is my wish, that if any patent has been issued in my name, that the same shall be rescinded and cancelled, as I do not wish to select said land under said treaty.

Yours, respectfully,

his
NE-CON-HE-CON. + mark.

Witness: F. JOHNSON, *U. S. Ind. Agent.*
ROBT. J. E. JONNEYCAKE, *Act. U. S. Int.*
A. S. H. WHITE.

To Hon. C. B. SMITH,
Secretary of the Interior.

(Copy.)

GENERAL LAND OFFICE, *January* 4, 1862.

SIR: Herewith I transmit, for such disposal as may be proper, three patents for the following locations under the 7th article of the
84 treaty of May 30, 1860, with the Delaware tribe of Indians, viz:

1st. One in favor of John Connor, recorded vol. 11, pages 522, 523, being for the SW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of sec. 23; the SW. $\frac{1}{4}$ of said sec. 23; the SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of sec. 22; the E. $\frac{1}{2}$ [of SE. $\frac{1}{4}$] and SW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of said sec. 22; lots Nos. 4, 5, 6 and 7, in sec. 26, and lots 3 and 4, in sec. 27, all in township 8 S., R. 22 E., of 6th pr. meridian, Kansas. Contents, $647\frac{20}{100}$ acres; excess acres, 7.20.

2d. One in favor of Ne-con-he-con, recorded vol. 11, pages 524, 525, being for the NE. $\frac{1}{4}$ of sec. 23; the E. $\frac{1}{2}$ [of NW. $\frac{1}{4}$] and NW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of said sec. 23; and lot No. 2 of sec. 24, same township and range Contents, 332 acres; excess, 12 acres.

3d. One in favor of Henry Tiblow, recorded vol. 11, pages 525, 526, being for the SE. $\frac{1}{4}$ of sec. 23; lots Nos. 3 and 4 of sec. 24, and lot No. 4 of sec. 25, all in same township and range. Contents, $329\frac{29}{100}$ acres; excess, $9\frac{29}{100}$ acres.

These patents have been prepared in accordance with the approvals of the locations by the Office of Indian Affairs, of the 31st ult'o.

85 You will perceive that there is a certain excess in each case, in quantity, over the area of regular section or half-section designations; and it is for the Office of Indian Affairs to determine whether such excesses to be paid for before the delivery of the patents, or whether the existing allotments are to be treated as a sufficiently near approximation to the areas of such designations, and upon this point I request to be advised of the action of the Indian office.

Very respectfully, your ob't servant,

(Signed) J. M. EDMUNDS,
Commissioner.

Hon. WM. P. DOLE,
Commissioner of Indian Affairs.

(Copy.)

GENERAL LAND OFFICE, *June* 11, 1862.

SIR: On the 8th November, 1861, the Commissioner of Indian Affairs reported to this office that "the Secretary of the Interior" had "decided that" a certain tract of land, which had "heretofore been known as the military reserve, at Fort Leavenworth," in Kansas, "belongs to the Delawares, and" had "ordered the same to be surveyed," to which end you stated the expenses would be paid out of funds under the control of the Indian office.

86 2d. Instructions were despatched to the surveyor general, at Leavenworth, and were followed by returns of survey, in accordance with your report, copies of which were laid before you on 27th of December last.

3d. Subsequently, viz: under date 31 December, 1861, the Commissioner of Indian Affairs reported to this office three selections as having been made under the provisions of the 7th article of the treaty concluded with the Delawares 30th May, 1860, in favor of "John Connor," "Ne-con-he-con," and "Henry Tiblow," stating that said selections had been *approved*, and desiring the patents transmitted to the Indian office for delivery, which was done on 4th January, 1862.

Enclosed I send a copy of a letter of present date from the Secretary of the Interior, stating that the patents have "been issued without legal authority, and are therefore void, and they are hereby revoked and cancelled, and declared null and void."

The Secretary at the same time encloses letters (copies herewith) dated 10th instant, from John Connor and Ne-con-he-con, two of the aforesaid persons, stating that they never selected the lands, nor have the patents been received by them.

87 To the end that complete effect may be given to the aforesaid order of revocation and amendment from the Secretary of the Interior, it becomes the duty of this office to call upon you to have the said patents returned to this office for cancellation.

Very respectfully, your ob't servant,

(Signed) J. M. EDMUNDS,
Commissioner.

Hon. WM. P. DOLE, *Com'r of Indian Affairs.*

(Copy.)

DEPARTMENT OF THE INTERIOR,
June 11th, 1862.

SIR: I transmit herewith a copy of a letter this day sent to the Commissioner of the General Land Office, revoking and cancelling patents which were issued on the 3d January last to John Connor, Ne-con-he-con, and Henry Tiblow, respectively, of the Delaware tribe of Indians, for certain lands therein described, and embraced in the Fort Leavenworth reservation These patents were issued without proper authority, and are therefore void.

You will make such entries upon your records as will show that the patents have been revoked and cancelled.

The grantees in the patents will be allowed to select other
88 lands within the limits of the Delaware reservation, in conformity with the 7th article of the treaty between the Delaware Indians and the United States, ratified on the 22d August, 1860.

Very respectfully, your ob't servant,

(Signed) CALEB B. SMITH,
Secretary of the Interior.

WM. P. DOLE, Esq.,
Com'r of Ind'n Affairs.

(Copy.)

DEPARTMENT OF THE INTERIOR,
June 11, 1862.

SIR: I learn by your communication, of the 2d instant, that on the 3d day of January last a patent was issued to John Connor, of the Delaware tribe of Indians, for the following tracts of land, viz: The southwest $\frac{1}{4}$ of the northwest $\frac{1}{4}$ and the southwest $\frac{1}{4}$ of section 23; the southeast $\frac{1}{4}$ of the northeast $\frac{1}{4}$, the east $\frac{1}{2}$ and southwest $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of section 22; lots 4, 5, 6 and 7, in section 26; and lots 3 and 4, in section 27; all in township 8 south, of range 22 east, of the 6th principal meridian, in Kansas.

Also, on the same day, a patent was issued to Ne-con-he-con,
89 of the same tribe, for the following described lands, viz: The northeast $\frac{1}{4}$ and the east $\frac{1}{2}$ and the northwest $\frac{1}{4}$ of the northwest $\frac{1}{4}$ of section 23, and lot No. 2 of section 24, of same township and range. And on the same day a patent was issued to Henry Tiblow for the following described lands, viz: The southeast $\frac{1}{4}$ of section 23, and lots 3 and 4 in section 24, and lot 4 in section 25, of same township and range.

These patents purport to have been issued to cover selections of lands alleged to have been made by the parties above named, under the seventh article of the treaty between the United States and the Delaware Indians, ratified on the 22d day of August, 1860

These patents were executed without the knowledge of this department, and without any authority from me, and until the day on which your letter bears date. I had no information that such patents had been issued.

The grantees named in the patents had no title to, or right, claim or interest in, said lands. They had no authority to select the said lands under or by virtue of any provision contained in said treaty.

I transmit herewith letters from two of said grantees, as-
90 serting that they never selected said lands under said treaty, and never requested that a patent should be issued for them, and that the patents never have been delivered to them.

The patents to the persons above named, for the lands before described, have been issued without legal authority, and are therefore void; and they are hereby revoked and cancelled and declared null and void. You will please enter upon your records an order revoking and cancelling said patents and declaring them null and void. You will hereafter issue no patents to any person for said lands, or any portion of them, or for any of the residue of the lands embraced in said survey.

Very respectfully, your ob't servant,

(Signed) CALEB B. SMITH,
Secretary of the Interior.

J. M. EDMUNDS Esq.,
Com'r Gen'l Land Office.

The said complainant then offered and read in evidence the following, to wit:

"*Paper No.* 3."

GENERAL LAND OFFICE,
October 14, 1862.

I, J. M. Edmunds, Commissioner of the General Land Office,
91 do hereby certify that the annexed letter, dated October 14, 1854—plat of the U. S. reservation at Fort Leavenworth, and field-notes of the survey of said reservation—true and literal exemplifications of the originals on file in this office. The following words in ink, "this line extended to the Missouri river in 1861," being a copy of a note added in pencil at General Land Office, on west side of map. In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] J. M. EDMUNDS,
Commissioner of the General Land Office.

WAR DEPARTMENT,
Washington, Oct. 14, 1854.

SIR: I herewith enclose a map and field-notes of a survey of a tract of land at Fort Leavenworth, to be reserved for military purposes, under an order of the President dated the 10th instant, and endorsed upon the papers.

Very respectfvlly, your obed. serv.,

JEFF'N DAVIS,
Secretary of War.

Hon. R. MCCLELLAND, *Secretary of the Interior.*

(Here follows map marked original, page 92.)

93 *Field-notes*

of the survey of the United States reservation at Fort Leavenworth for military purposes. Surveyed under directions of Capt. E. F. Hunt, 4th artillery, commanding Fort Leavenworth, in conformity with instructions of Hon. Sec'y of War.

Sept. 23, 1854.

J. C. McCOY, *Surveyor.*

FRIDAY, *Sept.* 1, 1854.

Commenced the survey of the U. S. military reservation for Fort Leavenworth, under the direction of Capt. F. E. Hunt, 4th artillery, commanding Fort Leavenworth, as follows: Established the southeast corner thereof on the southwest bank of Missouri river, one hundred and forty eight chains (4 pole,) below the lower end of stone warehouse, at Fort Leavenworth landing, by inserting in the earth a square stone, marked on N. side "U. S.," under which made deposit of charcoal, from which the mouth of ravine from W. bears S. 20° E. 116 links, and a lynn tree, 11 links circum., bears N. 33° 30′ east 8 lks., and the upper end of island in the river bears N. 61° 15 E., and the lower point of same bears S. 17° E.

Proceeded thence S. 87° W.

Magnetic variation 10° 50′ E; chain, 4 poles.

94

Course.	Dist.	
S. 87° W..	5. 17	To white oak on line 13 links circum.
"	20. 00	Set stone on W. side of ravine; co. N. for ¼ mile.
"	40. 00	Set stone, marked U. S., and deposited charcoal for ½ mile; neck of prairie extends E. 5 chains.
"	42. 00	Entered brush and timber bearing E. & W.
"	50. 00	To the Westport road; co. S. 2° E.
"	60. 00	Set stone for ¾ miles, marked U. S.; deposited charcoal.
"	78. 00	Set a stone on chain on east of cornfield fence; from this point a survey was made to include a corner of the field, running thence S. 24° W. to a corner; thence N. 65° 30′ W. 61. 31 chains, as will be shown by the field-notes of the same, hereinafter annexed.
		Proceeded thence from dist. 78. 00, on a continuation of direct line, through the field
S. 87° W..	79. 00	To cornfield fence; co. N. 24° E. and S. 24° W.
"	80. 00	Set stone, marked U. S., and deposited charcoal for one mile
"	20. 00	Set stone and deposited charcoal 2 chs. W. of ravine for 1¼ miles.
"	38. 00	To cross fence of field; co. S. 16° W.
"	40. 00	Set stone, marked U. S., and deposited charcoal for 1½ m.
"	5. 00	To ravine; co. S. 20° E.
"	60. 00	Set stone, marked U. S, and deposited charcoal for 1¾ miles, from which black oak, 10 inches diameter, bears N. 66° 30′, W. 246
95		links, and a hickory, 10 inches diam., bears N. 78°, W. 170 links.
		To the south fence of the prairie farm; co. S. 65° 30′ E.
"	65. 32	Set stone, marked "U. S.;" this being the point at which the survey of the line outside of the field intersects the present or straight line
"	67. 00	
		Continued on same course S. 87° W.

Course.	Dist.	
S. 87° W..	80.00	Set stone, marked "U. S.," and deposited charcoal in head of prairie bottom; co SE. for 2 miles.
"	14.50	To a road; co. S. 41° W.
"	20.00	Set stone, marked "U. S.;" deposited charcoal for 2¼ miles on side of point of ridge, bearing S 75° E.
"	40.00	Set rock, marked "U. S.," and deposited charcoal on side of same ridge, noted above, for 2½ miles, from which blk. oak, 10 links cir cum., bears S. 15°, W. 90 links
S. 87° W..	12.80	To small brook; co. S. 37° E., spring in head of same 3 chains to N.
"	80.00	Established the SW. corner of the U. S military reservation by inserting a rock, marked "U. S.," under which made deposit of charcoal, and around it made mound of rocks, from which a black oak, 10 links circum., bears N. 31°, E 11 links, marked "U. S. res. cor.," and another bears S. 45° 30 E.
		Proceeded thence N. 31° E.
N. 31° E..	15.00	To centre of valley; co. S.
96		
"	20.00	Set rock on side hill, marked "U. S.," and deposited charcoal for ¼ mile.
"	22.25	To a black oak on line, 20 in. diam.
"	40.00	Set stone on side hill of ravine running N., marked "U. S," and deposited charcoal for ½ mile.
"	60.00	Set stone, marked "U. S.," and deposited charcoal on SW. side of ravine, NW. for ¾ miles.
"	64.00	To ravine; co. N.
"	80.00	Set stone on S. side and near top of ridge; brg. SW.; marked "U. S;" deposited charcoal for 1 mile.
"	10.00	In head of ravine; co. W.
"	20.00	Set stone in head of ravine, co. E; marked U. S., and deposited charcoal for 1¼ miles.
"	40.00	Set stone, marked U. S., and deposited charcoal for 1½ miles.
"	45.00	Entered brush on side of valley; its co N.
W. 31 W..	58.00	To the main road leading from Fort Leavenworth to Fort Riley, Laramie, &c; co. W. & SW.
"	60.00	Set a stone, marked "U. S.," and deposited charcoal in valley; co. W. for 1¾ miles.
"	14.00	To top of hill brg. NW. & SE; the overhigh point of hill to—
"	80.00	Set stone, marked "U. S.," and deposited charcoal in brushy hill-side for 2 miles; continued on hill-side through brush to—
"	20.00	Set stone, marked "U. S.," and deposited charcoal on brow of hill running E. & S. for 2½ miles.
"	40.	Set stone, marked U. S., and deposited charcoal on W. side and near the top of ridge; co. about N. 20° E., from which black oak
97		8 lks. circum. bears S 35° 30′ E., 0.53 links.
		Changed course north—
North.	.....	Then through scattering oak timber.
"	20.00	Set stone, marked "U. S.," and deposited charcoal in head of ravine; co. NE. for ¼ mile.
"	40.00	Set stone, marked U. S., and deposited charcoal on S. side of ravine; co. NW. for ½ mile; continued through scattering oak timber.
"	60.00	Set stone, marked "U. S.," and deposited charcoal on eastern slipe of ridge near top for ¾ m.
"	80.00	Set stone on steep hill-side, brg. E. & W. at a ledge of rocks, marked "U. S.," from which a line 14 links circum. bears N. 62° E. 78 links for 1 mile on this course.
		Then down steep hill and through valley to—
North.....	13.50	To old road in middle of valley; co. W.
"	20.00	Set stone, marked "U. S.," and deposited charcoal for 1¼ m.
"	32.00	To a ravine; co. N. and NW.

Course.	Dist.	
North.....	40. 00	Set a stone, marked U. S , and deposited charcoal, from which black walnut 12 links circum. bears N. 74° 30′ E., 110 links, burnt on side facing rock for 1½ miles.
"	11. 00	To ravine; co. W.
"	27. 50	To top of ridge narrow; co. E & W., being the river bluff; set rock, marked "U. S ," and deposited charcoal, from which sugar tree
98		7 links circum. bears N. 58° E. 47 links, marked "U. S., 4¼ m;" then proceeded down.
"	53.	Steep bluff to — to the river bank, at which established the northwest corner of U. S. military reservation for Fort Leavenworth, by inserting in the earth a rock and making around it mound of same, under which deposited charcoal, from which a hickory 10 links circumference bears S 44° 30′ east, and an elm 7 links circumference bears south 20° 30′ E., 80 links.
		Whole distance on this line being 153 chains.

99 *Field-notes of a survey, commencing on the southern boundary, (being the line first noted,) at a point 78 chains from the southeast corner of the reservation, and thence, outside of fence of the government farm, to its intersection with the straight line above named.*

	Chs. Lks.	
		Commenced at a point on line first noted, 78 chains from the commencement thereof, on the bank of Missouri river, and run thence S. 24° W.
S. 24° W....	31. 50	Set a stone, marked "U. S.," and deposited charcoal, as the corner of the survey around the government field; proceeded thence N. 65° 30′ W.
N. 65° 30′ W.	34. 00	To small branch, S. co., 30° E.
	61. $\frac{53}{100}$	To the intersection of this with the straight line first noted above, at a rock already noted on same, at one mile and 67 chains from the commencement thereof at river.

ield-notes of the survey of the meanders of the southwest bank of Missouri river, commencing at the southeast corner of the United States military reservation for Fort Leavenworth, then up with the meanders aforesaid to the northwest corner of said reservation.

	Course	Dist.	Notes.
		Chs. Lks.	
1	N. 47° 30 W..	25. 00	
2	N. 14° W.....	18. 00	At 17. 50 cross Small creek from W. Corral creek.
3	N. 6° 15 E....	18. 00	
4	N. 4° W.....	37. 00	At 16. 20 crosses Slaughter-house creek.
5	N. 86° E.....	2. 93	
6	N. 2° E.....	15. 00	
7	N. 4° W.....	12. 00	
8	N. 10° W.....	15. 00	
9	N. 4° W.....	9. 00	At 8. 00 opposite the stone warehouse at Fort landing.
10	N. 13° W.....	18. 00	At 3. 00 Spring branch, then along in road
11	N. 17 E.....	10. 00	
12	N. 54 E.....	25. 00	
13	East.....	3. 00	
14	N. 64° 30′ E..	75. 00	At 10 mouth of Small creek.
15	N. 28° 45 E...	61. 00	
16	N 14° 15 W..	57. 00	
17	N. 21°, 30° W.	6. 00	
18	N. 36° W.....	8. 00	At 2. 00 Ferry landing.
19	N. 49°, 30° W.	21. 00	
20	S. 78° W.....	6. 00	
21	S. 74° 30′ W..	16. 00	
22	S. 63° W.....	6. 50	
23	S. 38° 15′ W..	12. 00	
	101		
24	S. 54° W.....	22. 00	
25	S. 81° W.....	6. 00	
26	S. 38° W.....	14. 00	
27	S. 75 W.....	52. 00	At 48. 00 to the cornfield fence.
28	N. 74° 30 W..	8. 00	
29	S. 85° 45′ W..	27. 00	
30	N. 75° 30′ W..	20. 00	
31	N. 67° W.....	19. 60	

I certify that the foregoing are the true and correct notes of the :vey made by me, of the U. S. military reservation for Fort Leavenrth, in Sept., 1854, under the direction of Capt. E. F. Hunt, 4th :'y, commanding Fort Leavenworth.

J. C McCOY, *Surveyor.*

Fort Leavenworth, K. T., September 28th, 1854. F. E. Hunt, ɔt. 4th art'y, comd'g post. Field-notes of survey of military reservation.

396 F., 1854.
B. B. 4—6029.

Recommended to the President for his approval, except the offset on e southern boundary, which includes a triangle properly belonging

102 to the Delaware tract. This modification makes the southern boundary, as now marked, conform to the old line, as reported to have been run. See map.

10th Oct., 1854

JEFF'N DAVIS,
Sec'y of War.

The land described within is hereby reserved for military purposes, as recommended.

October 10th, 1854.

FRANKLIN PIERCE

Endorsed: Sec'y of War. C. 41035. 14th Oct., 1854.

Enclo. map and field-notes of survey of military reservation at Fort Leavenworth, under order of President, dated the 10th inst., endorsed, &c:

DEPARTMENT OF THE INTERIOR, *Oct.* 16, 1854.

Respectfully ref'd to the Commissioner of the Gen'l Land Office for such action as may be called for on his part.

GEO. C. WHITING, *Acting Secretary.*

Instructed survy'r gen'l, Kansas and Nebraska, Oct. 23d, 1854. Sent copy of map and field-notes. Wrote to Acting Sect'y of Interior same day. W. T. S. Mr. Steiger, 17 Oct., 1854.

Sent copy of map to Comm'r Indian Affairs, Nov. 1854.

103 The said complainants then produced, offered, and read in evidence the following, marked "Paper No. 4," which was objected and excepted by the said defendant, on the ground that the same is irrelevant, the Secretary of the Interior having, as the said defendant alleges, no power to revoke a patent—the said paper No. 4 being in words and figures as follows, to wit:

Paper No. 4.—(Copy.)

GENERAL LAND OFFICE, *July* 16, 1862.

Whereas, upon the report and application of the Commissioner of Indian Affairs, three patents have been issued the following locations, as under the 7th article of the treaty of May 30th, 1860, with the Delaware tribe of Indians, being in the military reserve at Fort Leavenworth, viz:

1st. One in favor of John Connor, recorded vol. 11, pages 522, 523, being for the SW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of sec. 23; the SW. $\frac{1}{4}$ of said sec. 23; the SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of sec. 22; the E. $\frac{1}{2}$ (of SE. $\frac{1}{4}$) and SW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of said sec. 22; lots Nos. 4, 5, 6, and 7, of sec. 26, and lots 3 and 4 in sec. 27; all in T. 8 S., of R. 22 E., of 6th pr. meridian, Kansas. Contents, $647\frac{20}{100}$ acres.

104 2d. One in favor of Ne-con-he-con, recorded vol. 11, pages

52 and 525, being for the NE. ¼ of sec. 23; the E. ½ (of NW. ¼,) and NW. ¼ of NW. ¼ of said sec. 23; and lot No. 2 of sec. 24, same township and range. Contents, 332 acres.

3d. One in favor of Henry Tiblow, recorded vol. 11, pages 525 and 526, being for the SE. ¼ of section 23; lots 3 and 4 in sec. 24, and lot No. 4 of sec. 25; all in same township and range. Contents, $329\frac{29}{100}$ acres.

And whereas, under date June 11, 1862, the Secretary of the Interior rendered a decision that said patents have "been issued without legal authority, and are therefore void, and they are hereby revoked and cancelled and declared null and void:"

And whereas the said patents have been delivered by the said Commissioner of Indian Affairs—

Therefore be it known that the same have been *cancelled, declared void*, and of *none effect*, and the said *cancellation* is hereby certified for record in the county in which the said tracts are situated.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, the day and year above written.

[SEAL.] (Signed) J. M. EDMUNDS,
Commissioner of the General Land Office.

OFFICE OF REGISTER OF DEEDS,
County of Leavenworth, State of Kansas, ss:

I, W. S. Van Doren, register of deeds within and for the county aforesaid, do hereby certify that the within and foregoing instrument of writing was received by me for record this twenty-sixth (26th) day of July, A. D. 1862, at 10 o'clock a. m., and that the same is duly recorded in book "S" for recording conveyances, at page 626.

In testimony whereof, I have hereunto set my hand and official seal of office the day and year aforesaid.

[SEAL.] (Signed) W. S. VAN DOREN,
Register of Deeds,
By WM. BUCHER, *Deputy.*

(Copy.)

GENERAL LAND OFFICE, *August 23d*, 1862.

SIR: In the case of patents lately issued for lands at Fort Leavenworth, under the Delaware treaty of May 30, 1860, which were directed to be recalled and cancelled, I have the honor to enclose a copy of the certificate of cancellation issued by this office on the 16th July, 1862, which, it will be seen, has been duly recorded in the county in which said lands are situated.

With great respect, your ob't s'v't,
(Signed) J. M. EDMUNDS,
Commissioner.

Hon. CALEB B. SMITH,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, August 25, 1862.

I, Caleb B. Smith, Secretary of the Interior, do hereby certify that the foregoing, on pages 1, 2, and 3, are true copies of the originals on file in this Department.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the department to be affixed the day and year above written.
[SEAL.]

CALEB B. SMITH,
Secretary of the Interior.

107 And which said paper No. 4 is endorsed as follows, to wit: "Paper No. 4," offered by complainants, objected to (on the ground that the paper is irrevelant, the Secretary having no power to revoke a patent,) by def't.

And the said complainants then produce, offered, and read in evidence executive document No. 58, 33d Congress, 2nd session of the Senate of the United States, and executive document No. 50, 33d Congress, 2nd session of the Senate of the United States, which said executive documents, Nos. 58 and 50, are, by the consent and request of the solicitors of the complainant and defendant in this suit, hereto attached in printed form, and made part of this record and transcript. Said documents were also offered and read in evidence by the said defendant Stone, as will appear by reference to that part of this record which purports to give the evidence introduced by said defendant below set forth.

Said executive documents are in words and figures as follows, to wit:

108 SENATE.

33D CONGRESS, 2D SESSION.—EX. DOC. No 58.

Report of the Secretary of War, in compliance with a resolution of the Senate of February 12, 1855, *calling for information relative to the military reservation of Fort Leavenworth.*

FEBRUARY 21, 1855.—Read, ordered to lie on the table, and be printed.

WAR DEPARTMENT,
Washington, February 20, 1855.

SIR: I have the honor to submit herewith copies prepared in compliance with a resolution of the Senate of the 12th instant, directing the Secretary of War to communicate, in addition to the information called for by resolution of the 10th instant, "all the information and correspondence in his department in relation to the original establishment of Fort Leavenworth as a military post, the cause of the recent reduction of the reserve attached to that fort, with the correspondence that led to and followed it, with the several officers at the fort;" also, "all the correspondence to or from his department within the last year in relation to the occupancy of Kansas Territory by emigrants,

and the reasons which controlled General Clark when he ordered the commandant at Fort Leavenworth not to interfere with the emigration."

It will appear, from the papers herewith, that Fort Leavenworth was established in 1827 by a body of troops sent to take post in the country then occupied by tribes or bands of roving Indians.

Under such circumstances it was not usual to define by metes and bounds tracts or parcels of land required for military purposes; and it could not be necessary to do so, as the government recognized no title which could conflict with its free use and occupation; and as the Indian intercourse act not only gave full power, but made it the duty of the troops to remove all trespassers, no distinction would arise between an attempted settlement upon the land inside and outside of any limits which might have defined the extent of a military site, cantonments were therefore made in such cases wherever public interest dictated, and the adjacent land was used so far as desirable for cultivation, for fuel, for timber, for hay, and for pasturage; when, however, the government made special grants for the settlement of Indian tribes removed and located in a new home, this right, which has been stated as one exercised in the hunting grounds, received within the limits of such grant a modification which would probably have required the consent of the party in possession before establishing a military post upon it. But a "reservation" would in neither case be necessary, because its purpose is to prevent the land from being otherwise disposed of by the United States, and therefore a "reservation" only becomes necessary when such sites are upon public lands held for sale or settlement.

The general military authority in the Indian country, and the special powers subsequently given by the Indian intercourse act, were fully sufficient for the removal of all persons who might interfere with the military occupation of any site therein, and as the description or marking of boundaries was in no manner necessary to the exercise of the authority, that course was therefore never pursued.

By a treaty with the Delaware Indians in September, 1829, they were assigned a country west of the Missouri river, the eastern boundary of which commenced on the Missouri river at the mouth of Kansas river, and ran northward up the west bank of the Missouri to Camp Leavenworth, and thence northwest to a point ten miles north of the north corner of the Kansas lands. The following year a surveyor, Mr. Isaac McCoy, was sent to run and mark the lines bounding the Delaware country so ceded, and in the execution of this duty it became necessary to determine the point where the eastern boundary line of the Delawares, running northward up the Missouri, reached Camp Leavenworth, for at that point it was to terminate. This point he fixed upon the river bank one mile north of a small stream called Three-mile creek, and about two miles south of the flag-staff of the cantonment, thence he ran four miles southwest and three miles west of —— north, so as to avoid invading the buildings, improvements, and lands required for the use of the post, which, in the absence of evidence upon this point, it is presumed were pointed out to him by the commanding officer of the post as constituting the camp of Leav-

enworth. Having thus reached a point in a line drawn from the centre of the cantonment, on the second course, he left Camp Leavenworth. The boundaries were marked, and a copy of the map of the Delaware lands, embracing the lines thus run between the Delaware and the military lands, was filed in this department. This partial and incidental survey appears to have been the first attempt to fix the limits of Camp Leavenworth in any part.

In 1839 a survey of the military tract was again made by Captain A. R. Johnson, under the order of the commanding officer. On the map of this survey, which was duly filed in this department, the southern boundary appears as originally fixed by Mr. McCoy, but the western boundary was changed by taking the natural boundary, Salt creek, instead of the geographical line run by Mr. McCoy, which crossed that stream.

When the acts were passed organizing the Territories of Nebraska and Kansas, and providing for the survey and sale of public lands in those Territories, it became necessary, for the first time, to make a legal "reservation" of the site of Fort Leavenworth, *i. e.*, to determine authoritatively its limits, to mark them upon the plat of the public lands, and to obtain an order from the President that they should be withheld from sale. About the same time strong efforts were made by persons feeling an interest in the establishment of the seat of government of Kansas to obtain a relinquishment of the post for that object, and upon this being declined, they urged at least a reduction of the site. The department, however, in view of the public interests committed to its charge, could concede nothing more than that, in making the reservation, it should be restricted to lands actually required for military purposes; and orders were therefore given to the commanding officer of the post "to have a survey made and a reservation laid off, including the buildings and improvements, and so much of the land as is necessary for military purposes, looking to its use as a main depot and cavalry station." Under these general instructions, the commanding officer laid off a reservation, retaining the river boundary on the north and east, and following the original boundary marked by Mr. McCoy on the south, to a point about $1\frac{1}{4}$ mile short of the corner fixed by line, and from this point running northward along the highlands to the Missouri river. His survey and report were approved by the President, who ordered the lands so designated to be reserved from sale.

Upon these facts I have to report, in reply to the inquiry in the resolution as to the causes of the reduction of the reservation, that this reservation, strictly speaking, has never been reduced, but that when the reservation was made, so much of the land previously held for the use of the post was relinquished as in the judgment of the President, upon the report of the commanding officer of the post, was not required for military purposes.

It may be proper to remark that the land so relinquished forms no part of the tract on the Missouri river, between the southern boundary of the reserve and Three-mile creek, upon which the so-called city of Leavenworth has been recently laid out.

In regard to the inquiry in the last paragraph of the resolution, as to

the grounds upon which General Clark ordered the commandant at Fort Leavenworth not to interfere with the emigration into Kansas, I have to state that the report of Colonel Fauntleroy to General Clark, of May 24, 1854, and the endorsement of the latter thereupon, copies of which are herewith submitted, contain all the information in this department on the subject of this inquiry. From these it appears to have been the belief of that officer that the measures then in progress to establish a territorial government would soon be completed, as in fact they were within a few days after the date of his order; and although not stated, it may very probably, as it would very justly, have been inferred by him that the extinction of the Indian title relieved the military from the obligation, and deprived them of the authority to prevent persons from entering upon these lands, which had now become public lands of the United States.

Very respectfully, your obedient servant,

JEFFERSON DAVIS,
Secretary of War.

Hon. J. D. BRIGHT,
President of the Senate pro tem.

HEADQUARTERS FORT LEAVENWORTH,
May 24, 1854.

MAJOR: I have the honor to state that reliable information has reached this post that numerous emigrants are passing the river or boundary, and are making settlements within the Indian territory, and that the prospect is, that the rush, in a very short time, will be immense, unless arrested at an early moment. I have made this statement to the general commanding the department of the west, in view of the increasing difficulty on this subject, unless the bill for the organization of the territory should pass at an early moment; also, with reference to my near departure for New Mexico, which will leave this portion for a time without mounted troops.

These circumstances addressed themselves more immediately to me since, in the condition of things likely to arise, if it does not now exist, that will call for an instant interference of the troops, and will, at least, present for my decision the important question as to how far I shall, and under what circumstances, interpose.

I would be pleased to have instructions, and should it be deemed necessary or proper, to forward this communication to higher authority.

Very respectfully, your obedient servant.

THOS. T. FAUNTLEROY,
Colonel 1st Dragoons, Commanding.

Major F. N. PAGE, *Assis't Adj't General,*
Headquarters Department of the West,
Jefferson Barracks, Missouri.

HEADQUARTERS DEPARTMENT OF THE WEST,
Jefferson Barracks, May 29, 1854.

In reference to the passage of the Nebraska bill, so called, I have directed Colonel Fauntleroy to take no steps in regard to the matter

of his report. As a consequence of the passage of that bill, should any instructions to the military authorities be deemed necessary, I respectfully desire to be furnished with them.

N. S. CLARK, *Col. 6th Infantry,*
Brevet Brigadier General, Commanding.

ASSISTANT ADJUTANT GENERAL,
Headquarters of the Army.

HEADQUARTERS OF THE ARMY,
New York, June 6, 1854.

Respectfully forwarded by command of Major General Scott.

IRVIN McDOWELL,
Assistant Adjutant General.

ADJUTANT GENERAL'S OFFICE,
June 6, 1854.

Respectfully submitted to the Secretary of War.

S. COOPER,
Adjutant General.

[Extract.]

ADJUTANT GENERAL'S OFFICE,
Washington, March 7, 1827.

[Orders.]

* * * * * * * *

2. Colonel Leavenworth, of the 3d infantry, with four companies of his regiment, will ascend the Missouri, and when he reaches a point on its left bank near the mouth of the Little Platte river, and within a range of twenty miles above or below its confluence, he will select such position as in his judgment is best calculated for the site of a permanent cantonment. The spot being chosen, he will then construct, with the troops of his command, comfortable, though temporary quarters, sufficient for the accommodation of four companies. This movement will be made as early as the convenience of the service will permit.

* * * * * * * *

By order of Major General Brown.

R. JONES,
Adjutant General.

Extract from a letter of Colonel H. Leavenworth, third infantry, to Lieutenant E. G. W. Butler, acting assistant adjutant general, Cincinnati, Ohio, dated

CAMP MOUTH OF LITTLE PLATTE,
May 8, 1827.

SIR: On the 4th instant, at this place, a detachment of the sixth infantry, under command of Brevet Major Ketchum, with a portion of the public property from Council Bluffs.

A short examination of the country convinced me that there was no

good site for military purposes on the left bank of the Missouri within the distance of this place mentioned in the general order on that subject.

I accordingly proceeded up the river eighteen or twenty miles, and found a very good site for a cantonment on the right bank of the Missouri, about that distance from this place.

In addition to the advantage of being on the same side of the Missouri as the road to Santa Fé, this position (the one I have selected) possesses the very material one of having a dry and rolling country on the south and southwest of it. This will greatly contribute to the healthiness of the position. In addition to all this, I can safely say that there is no other place that will answer the purposes required within the prescribed distance of the Little Platte.

Extract from a letter of E. G. W. Butler, aid-de-camp, acting assistant adjutant general, to the adjutant general, dated—

ADJUTANT GENERAL'S OFFICE,
Western Department, Cincinnati, Ohio, May 26, 1827.

I have the honor to enclose a copy of Colonel Leavenworth's communication of the 8th instant, (reporting the selection of a site for the new post on the *right* bank of the Missouri, and requesting that the Indian agent, Mr. Dougherty, may be ordered to it,) which I beg you will lay before the Secretary of War.

ADJUTANT GENERAL'S OFFICE,
Washington, September 19, 1827.

SIR: The site which has been selected by Colonel Leavenworth for a permanent cantonment near the mouth of the Little Platte, in virtue of the general order of March 7, (No. 14,) is approved by the general-in-chief. The selection of the right instead of the "left bank" of the Missouri, for the reasons assigned by the colonel in his report of the 8th of May, addressed to department headquarters, is deemed to be judicious, and is therefore approbated.

I am, sir, very respectfully, your obedient servant,
R. JONES, *Adjutant General.*

Major General GAINES,
Com'd'g Western Department, Cincinnati, Ohio.

QUARTERMASTER GENERAL'S OFFICE,
Washington City, July 11, 1854.

SIR: Your communication of the 10th instant, with the accompanying copy of the original map of the military reserve at Fort Leavenworth, east of the Missouri river, is received. The object of the department is to obtain a plat of the reservation lying on the *west* side of that river, which I have accordingly to request may now be furnished.

Very respectfully, your obedient servant,
THOMAS S. JESUP,
Quartermaster General.

JOHN WILSON, Esq.,
Commissioner General Land Office, Washington City, D. C.

GENERAL LAND OFFICE, *July* 11, 1854.

SIR: In reply to your communication of this date, requesting a copy of the plat of the military reservation at Fort Leavenworth, on the *west* side of the Missouri river, I have to state that there does not appear to have been any action through this office for reserving lands at that post *west* of the river, but only the portion east of the river, opposite the fort, as shown by the map transmitted with my letter of the 10th instant.

I am, very respectfully, your obedient servant,
JOHN WILSON, *Commissioner.*

Lieut. Col. CHARLES THOMAS,
Deputy Quartermaster Gen. in charge, War Dep't.

Endorsements on the above.

Respectfully referred to the adjutant general. It is understood that a reserve was made by order of the President of the United States within the Indian territory west of Missouri, the site of the present post of Fort Leavenworth, and that the order for the reserve was issued from the Adjutant General's office. Is there a report and survey of the reserve in the office? If there be no evidence of the reserve having been made, we may lose the site with all the improvements.

THOMAS S. JESUP, *Quartermaster Gen.*

JULY 14, 1854.

Respectfully returned to the quartermaster general. It does not appear from our examination of the records of this office, that any reservation has ever been made at Fort Leavenworth on the west side of the Missouri river.

S. COOPER, *Adjutant General.*

ADJUTANT GENERAL'S OFFICE, *July* 18, 1854.

Respectfully returned to the adjutant general.

It is desirable that the lands necessary for military purposes at Fort Leavenworth be formally set apart for military purposes, otherwise they will be seized upon by squatters, and the public will lose not only the land but the improvements. I respectfully recommend that the proper orders be issued for surveys to be made, and that the authority of the President to the land department be obtained to reserve from sale the lands now occupied, and which are considered necessary for military purposes.

THOS. S. JESUP,
AUGUST 3, 1854. *Quartermaster General.*

Respectfully submitted to the Secretary of War.

It does not appear to have been the practice of the department to make reservations of lands for military purposes within the Indian territory, the laws regulating trade and intercourse with Indian tribes being, in that case, sufficient to prevent intrusion. But as the

lands in the neighborhood of Fort Leavenworth are now about to be surveyed and brought into market, it is recommended that the land at that post required for military purposes be now set apart and reserved from sale by the President.

S. COOPER, *Adjutant General.*

ADJUTANT GENERAL'S OFFICE, *August* 7, 1854.

Let orders be given to have a survey made and a reservation laid off, including the buildings and improvements, and so much land as is necessary for military purposes, looking to its use as a main depot and cavalry station. A plat will be made, and such description of the tract given as will enable the Commissioner of the General Land Office to have it marked on the plats of the public lands.

JEFFERSON DAVIS,
Secretary of War.

WAR DEPARTMENT, *August* 9, 1854.

ADJUTANT GENERAL'S OFFICE,
Washington, August 11, 1854.

SIR: By direction of the Secretary of War, you will cause a survey to be made, and a reservation laid off, including the buildings and improvements and so much land as may be necessary for military purposes, at Fort Leavenworth, looking to its use as a main depot and cavalry station.

A plot of the reservation will be made, and such a description of the tract given as will enable the Commissioner of the General Land Office to have the reservation marked upon the plats of the public lands.

Very respectfully, your obedient servant,

S. COOPER.
Adjutant General.

COMMANDING OFFICER,
Fort Leavenworth, Missouri.

WAR DEPARTMENT,
Washington, October 14, 1854.

SIR: I herewith enclose a map and field-notes of a survey of a tract of land at Fort Leavenworth to be reserved for military purposes, under an order of the President dated the 10th instant, and endorsed upon the papers.

Very respectfully, your obedient servant,

JEFFERSON DAVIS,
Secretary of War.

Hon. R. MCCLELLAND,
Secretary of the Interior.

FORT LEAVENWORTH,
Kansas Territory, September 28, 1854.

COLONEL: I herewith enclose field-notes of a survey made for a military reserve at Fort Leavenworth, in obedience to instructions

received by me, dated Adjutant General's Office, Washington, August 11, 1854, and by this mail I forward a map of said reserve in Kansas Territory. This is entirely independent of the reserve in Missouri, which I consider at present necessary to retain on account of the timber, ferry, &c.

It appears from records in the possession of Mr. J. C. McCoy, who assisted in making a survey, that in October, 1830, a reservation was laid off, the southern boundary of which commences at the same point that the present southern boundary commences, and corresponds with it, with the exception of a slight offset, which you will observe running around the farm fence, containing a tract of about one hundred acres, which lies on the Delaware lands.

The line was run in this manner to include, according to instructions, all the improvements; but as it is clearly land already assigned to the Delawares, and it is the only land in the reservation that can be claimed by any Indians, I would respectfully suggest that the straight dotted line across the farm field be made the boundary, and that the assistant quartermaster at this post be directed to move his fence to conform therewith.

The line thence continues with the southern boundary, but as the reserve, as formerly laid out, was much larger than I conceived necessary under my instructions, I only went out $2\frac{3}{4}$ miles on this line, and thence along the top of the bluffs as near as I could to make a good boundary to the Missouri river.

I am, colonel, very respectfully, your obedient servant,

F. E. HUNT,
Capt. 4th artillery, com'd'g post.

Colonel S. COOPER,
Adjutant General U. S. army, Washington, D. C.

Respectfully submitted to the Secretary of War. Please see herewith a copy of the instructions to the commanding officer at Fort Leavenworth to cause the reservation to be laid off and surveyed.

S. COOPER,
Adjutant General.

ADJUTANT GENERAL'S OFFICE,
October 9, 1854.

The accompanying field-notes and map of reservation for military purposes are submitted to the President, and recommended for his approval and orders, as indicated within.

JEFFERSON DAVIS,
Secretary of War.

OCTOBER 10, 1854.

SENATE.

33D CONGRESS, 2D SESSION, EX. DOC. NO. 50.

Report of the Secretary of War in compliance with a resolution of the Senate of February 10, 1855, *calling for correspondence relative to the military reservation at Fort Leavenworth.*

FEBRUARY 14, 1855.—Read, referred to the Committee on Military Affairs, and ordered to be printed.

WAR DEPARTMENT,
Washington, February 13, 1855.

SIR: I have the honor to transmit the accompanying papers, in compliance with a resolution of the Senate of the 10th instant, requesting the Secretary of War "to communicate to the Senate copies of the correspondence between the Secretaries of the War and the Interior Departments, respecting a claim advanced by the Commissioner of Indian Affairs to the military reservation at Fort Leavenworth; together with the result of his investigation of the alleged interference of certain army officers, named in a recent report of the Commissioner of Indian Affairs, with the rights of the Delaware Indians."

Very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

Hon. J. D. BRIGHT,
President pro tem. of the Senate.

DEPARTMENT OF THE INTERIOR,
Washington, October 11, 1854.

SIR: I have received a letter from Colonel Manypenny, the Commissioner of Indian Affairs, dated Fort Leavenworth, September 26, from which I extract for your information, and such action as you may deem proper, as follows:

"The Delawares are much disturbed in mind because the whites are beginning to settle on their land, and claim that it is subject to preemption, (the question submitted to and decided by the Attorney General.) The principal claims are made adjacent to, and within a few miles of, the military reserve at this point; and I regret to say to you that Major Ogden, of the quartermaster's department, and Major Maclin, of the pay department, have been the principal and main instigators to this lawless course of proceeding.

"If all I learn be true—and I have the best reasons to believe the reports—these gentlemen have been guilty of conduct for which they ought to be cashiered and discharged from the service.

"They were the prime movers in projecting the new town site of Leavenworth, some two and a half miles below the fort, and in the Delaware tract, and have enlisted with them some thirty other persons. After making this move in violation of the treaty, they are and have been urging settlers to make claims adjacent to the military reserve, and for miles distant on the Delaware land, hoping thus to make force to aid them.

"They have now an advertisement out to sell lots at this town on the 9th October; and to induce persons to buy, the story is rife that government has made a special grant of 320 acres for the town, and that therefore there can be no difficulty about title.

"The soldiers were employed to help build their pre-emption shanties, cut the brush, &c.; and government tents used at the time.

"All the employés of any influence in the quartermaster's and pay departments are interested in the matter; and where an innocent squatter, not of their kind, has attempted to make a claim near their land, they have drove him off by threats of the military.

"Now, will this state of things be tolerated? But for their example, I am satisfied no squatter would have located on the Delaware land."

He urgently requests that steps be taken by the War Department with a view "to remove all the people from this town site, (Leavenworth,) and that all the principal evidences of claims on the Delaware land near the reserve be demolished;" and says that "Captain Hunt can do it without difficulty," and that "it will cure everything."

"The government," he continues, "owes it to itself to do this at once—and it surely owes it to the Delaware Indians—and it can be done without the sacrifice of life or limb." He says "the commanding officer has had a surveyor at work, reducing the limit of the reservation; and I saw this morning a plat of the old reserve with the contemplated reduction marked on it. This reduction leaves a strip of land between the Indian land and the diminished reserve, and this strip, even before the survey, had placed upon it the necessary monuments, according to squatter law, to enable the military men here and their friends to have each a pre-emption claim of land worth from $10 to $30 per acre, valued here, under the excitement of the times, at $50 per acre. This diminution of the reserve is said to be made in pursuance of orders from the War Department.

"The surveyor told me the commandant was going to send on the plat of the reduced survey to headquarters for approval. Whether he meant to St. Louis or to Washington, I do not know. I do hope the thing will be disapproved; and if the reserve is reduced in size, that the land left out of it may be sold under the law of 1843."

In conclusion, he reiterates his recommendation for the removal, by the War Department, "of the squatters from the Delaware lands, and especially those on the town site of Leavenworth and adjacent to the reserve;" and says, "the balance will follow." He also states that "neither the commandant of the post, nor Majors Ogden or Maclin, are here at present."

I am, sir, very respectfully, your obedient servant,

R. McCLELLAND,
Secretary.

Hon. JEFF. DAVIS, *Secretary of War.*

WAR DEPARTMENT,
Washington, October 14, 1854.

SIR: I have to acknowledge the receipt of your letter of the 11th instant, communicating extracts from a report of the Commissioner of

Indian Affairs respecting pre-emption claims made by certain army officers, and by others at their instigation, upon the lands of the Delaware Indians near Fort Leavenworth, and upon a portion of the reservation at that post which the department intends to relinquish.

Orders have been given to obtain from the commanding officer at Fort Leavenworth a full report of all the facts in this case; and when it is received, a further communication will be made to you upon the subject. In the mean time I send herewith a copy of the map of the reduced reserve, from which you will perceive that the southern boundary is the same throughout its whole extent as that of the old reserve, and that the portion of the land excluded from the reservation cannot have been selected for a town site, being remote from the river, and in rear of the present reservation.

Very respectfully, your obedient servant,

JEFFERSON DAVIS,
Secretary of War.

Hon. R. McCLELLAND,
Secretary of the Interior.

The map above referred to accompanies another letter of this date, with field-notes of the survey, and the order of the President making the reservation.

Please furnish this department a map showing the lines of the Delaware and Kickapoo lands, contiguous to the reserve, with a reference to the treaties establishing the boundary thereof.

DEPARTMENT OF THE INTERIOR,
Washington, November 14, 1854.

SIR: I have the honor to forward to you herewith a communication of the 9th instant, from the Commissioner of Indian Affairs, transmitting several maps, in compliance with the request contained in your letter of the 14th ultimo. I forbear expressing any opinion as to Mr. McCoy's acts.

I am, sir, very respectfully, your obedient servant,

R. McCLELLAND,
Secretary.

Hon. JEFFERSON DAVIS,
Secretary of War.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, November 9, 1854.

SIR: In compliance with the request of the Secretary of War, contained in his letter to you of the 14th ultimo, to furnish the War Department with "a map showing the lines of the Delaware and Kickapoo lands contiguous to the reserve, (at Fort Leavenworth,) with references to the treaties establishing the boundaries thereof," and which was referred to this office for the information desired, I have the honor herewith to transmit to you a copy of an original map now on file in this office, of the Delaware, Kickapoo, and other adjacent Indian lands, as surveyed and platted by Isaac McCoy, who was the

"They have now an advertisement out to sell lots at this town on the 9th October; and to induce persons to buy, the story is rife that government has made a special grant of 320 acres for the town, and that therefore there can be no difficulty about title.

"The soldiers were employed to help build their pre-emption shanties, cut the brush, &c.; and government tents used at the time.

"All the employés of any influence in the quartermaster's and pay departments are interested in the matter; and where an innocent squatter, not of their kind, has attempted to make a claim near their land, they have drove him off by threats of the military.

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"The surveyor told me the commandant was going to send on the plat of the reduced survey to headquarters for approval. Whether he meant to St. Louis or to Washington, I do not know. I do hope the thing will be disapproved; and if the reserve is reduced in size, that the land left out of it may be sold under the law of 1843."

In conclusion, he reiterates his recommendation for the removal, by the War Department, "of the squatters from the Delaware lands, and especially those on the town site of Leavenworth and adjacent to the reserve;" and says, "the balance will follow." He also states that "neither the commandant of the post, nor Majors Ogden or Maclin, are here at present."

I am, sir, very respectfully, your obedient servant,

R. McCLELLAND,
Secretary.

Hon. JEFF. DAVIS, *Secretary of War.*

WAR DEPARTMENT,
Washington, October 14, 1854.

SIR: I have to acknowledge the receipt of your letter of the 11th instant, communicating extracts from a report of the Commissioner of

Indian Affairs respecting pre-emption claims made by certain army officers, and by others at their instigation, upon the lands of the Delaware Indians near Fort Leavenworth, and upon a portion of the reservation at that post which the department intends to relinquish.

Orders have been given to obtain from the commanding officer at Fort Leavenworth a full report of all the facts in this case; and when it is received, a further communication will be made to you upon the subject. In the mean time I send herewith a copy of the map of the reduced reserve, from which you will perceive that the southern boundary is the same throughout its whole extent as that of the old reserve, and that the portion of the land excluded from the reservation cannot have been selected for a town site, being remote from the river, and in rear of the present reservation.

Very respectfully, your obedient servant,

JEFFERSON DAVIS,
Secretary of War.

Hon. R. McCLELLAND,
Secretary of the Interior.

The map above referred to accompanies another letter of this date, with field-notes of the survey, and the order of the President making the reservation.

Please furnish this department a map showing the lines of the Delaware and Kickapoo lands, contiguous to the reserve, with a reference to the treaties establishing the boundary thereof.

DEPARTMENT OF THE INTERIOR,
Washington, November 14, 1854.

SIR: I have the honor to forward to you herewith a communication of the 9th instant, from the Commissioner of Indian Affairs, transmitting several maps, in compliance with the request contained in your letter of the 14th ultimo. I forbear expressing any opinion as to Mr. McCoy's acts.

I am, sir, very respectfully, your obedient servant,

R. McCLELLAND,
Secretary.

Hon. JEFFERSON DAVIS,
Secretary of War.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, November 9, 1854.

SIR: In compliance with the request of the Secretary of War, contained in his letter to you of the 14th ultimo, to furnish the War Department with "a map showing the lines of the Delaware and Kickapoo lands contiguous to the reserve, (at Fort Leavenworth,) with references to the treaties establishing the boundaries thereof," and which was referred to this office for the information desired, I have the honor herewith to transmit to you a copy of an original map now on file in this office, of the Delaware, Kickapoo, and other adjacent Indian lands, as surveyed and platted by Isaac McCoy, who was the

government surveyor for the special duty of making surveys of the tracts assigned to the different Indian tribes.

By the supplementary article to the Delaware treaty, concluded at St. Mary's, in the State of Ohio, on the 3d of October, 1818, partially concluded at Council Camp, on the James fork of White river, in the State of Missouri, on the 24th of September, 1829, and finally concluded at Council Camp, in the forks of the Kansas and Missouri rivers, on the 19th October, 1829, (U. S. Statutes at Large, vol. 7, pages 327-8,) the cession to the Delaware Indians by the United States is described as "the country in the fork of the Kansas and Missouri rivers, extending up the Kansas river to the Kansas (Indians) line, and up the Missouri river to Camp Leavenworth, and thence by a line drawn westwardly, leaving a space ten miles wide north of the Kansas boundary line for an outlet." And the United States guarantied to the Delawares the quiet and peaceable possession and undisturbed enjoyment of the same, against the claims and assaults of all and every other people whatsoever, as their permanent home.

By the supplemental article to the treaty with the Kickapoo Indians of the 24th of October, 1832, concluded at Fort Leavenworth the 26th day of November, 1832, it is "agreed that the boundary lines of the lands assigned to the Kickapoos shall begin on the Delaware line, where said line crosses the left branch of Salt creek; thence down said creek to the Missouri river; thence up the Missouri river thirty miles when measured on a straight line; thence westwardly to a point twenty miles from the Delaware line, so as to include in the lands assigned the Kickapoos at least twelve hundred square miles." (U. S. Statutes at Large, vol. 7, page 394)

The resolution of the Senate of the United States ratifying the supplemental article to the Delaware treaty, contains the following proviso: "*Provided*, That the President of the United States, with all convenient despatch, employ a surveyor, at the usual rate of compensation for like services, to run the lines of the country by the foregoing treaty granted to the said Delaware nation of Indians, to establish certain and notorious landmarks accurately and permanently to distinguish the boundaries of the said granted country, and of the said outlet reserved in this treaty; that the said surveyor run the lines and fix and establish the boundaries of the said granted country, and the said outlet, in the presence of an agent to be designated by the Delaware nation; and that it shall be the duty of the said surveyor to report to the President of the United States his proceedings in the premises, together with a map or draught of the said granted country and the said outlet; and that when the President shall be satisfied that the said proceedings had been concurred in and approved of by the agent of the said Delaware nation, he shall also approve of the same by his signature and seal of office, and cause one copy of the same to be affiled among the archives of the government, and one copy to be delivered to the agent of the Delaware nation, for the use of the said nation, and which shall be thereafter binding and conclusive upon the respective parties to the foregoing treaty."

On the 3d of June, 1830, instructions were issued from this office

to the Rev. Isaac McCoy, the surveyor appointed to perform the duty provided for in the resolution of the Senate. Mr. McCoy was informed that the "Secretary of War, by the authority of the President of the United States, refers the execution of this duty to you, [him.] No detailed instructions are necessary, since these are ample in the treaty, and the resolution of the Senate which accompanies it. You will be governed by these, and in every particular."

I am unable to find in this office any report, or copy thereof, of the surveyor, of his proceedings, with a map or draught of the same, *approved by the agent of the Delawares, with the signature and seal of office of the President, as provided for in the Senate resolution.* If such an instrument be in existence, it is, perhaps, in the State Department.

There is, however, on file in this office a paper endorsed "Copy—Isaac McCoy's Report of Survey of Delaware Lands." This paper is without date, is addressed to "Hon. John H. Eaton, Secretary of War," and signed "Isaac McCoy, surveyor, &c.," and is identified in the introductory paragraph as being his report under the appointment of June 3, 1830. He says—"Sir: It was July 19th that I actually entered upon the discharge of the trust which you had been pleased to confide to me on the 3d of June."

The report speaks of several Indian tracts; and in the body of it Mr. McCoy observes that "Captain John Quick, the agent chosen by them (the Delawares) to attend the surveying of their lands, is an aged and respectable man, and second chief of the tribe. The Delawares, anxious to move into their new country before the commencement of cold weather, and needing his assistance in removing, had instructed him not to remain with our party until the work was completed, but to return to them so soon as he had followed around their lands designed for *settlement*. In consequence of this, I was *unable* to keep him with me until the completion of the survey. His certificate, witnessed by the commanding officer and sundry others at Cantonment Leavenworth, and by the Delaware and Shawnee interpreters, and the accompanying certificate of Major Campbell, the sub—though on this occasion acting—agent for the Delawares, will, I doubt not, be entirely satisfactory.

"It is worthy of notice that in going from the Shawnee agency to Cantonment Leavenworth, we necessarily crossed over the eastern end of the entire tract assigned to the Delawares. In passing thence to the Kansas agency we necessarily recrossed these lands diagonally. When we reached the place of our beginning on the Kansas line, we had travelled over their country the whole distance, from east to west; and in doing this we had varied our course so as twice to cross their land from north to south. Captain Quick was then conducted along their eastern [western line] to its northern extremity, and shown the commencement of each line of their outlet. Thence he proceeded along their northern boundary to Cantonment Leavenworth. By these means, and by his occasional hunting excursions, he obtained an extensive view of their country, and a thorough knowledge of its locality and character." And further on in the report Mr. McCoy says: "In the treaty with the Delawares of September 24, 1829, no provision was made for a military reserve at Cantonment Leaven-

worth. It has been thought desirable that a tract of six miles on the Missouri river, and four miles back, should be secured for this object. *Accordingly, the survey about the garrison has been made with a view to such a reservation, as will be seen by a reference to the plate.* In this arrangement the Delaware chief—to whom the whole was fully explained on the ground—has cordially acquiesced."

I have been thus particular on this subject, because in the investigation of it I have come to the conclusion that all that portion of what is known as the military reserve at Fort Leavenworth, lying south of a direct line drawn from Cantonment [Fort] Leavenworth, to a point ten miles north of the northeast corner of the old Kansas line, belongs to the Delaware Indians; and that Mr. McCoy was not authorized by his instructions—the treaty and the resolution of the Senate—to set apart or appropriate any portion of it to military purposes, and that all that he did do, therefore, in the way of running the lines marked on map thus: "S. 8° W., 4 miles;" and thus: "N. 3° west 3 miles," are void and of no effect.

The report of the surveyor—who was at the time an officer of the government—is conclusive. I think that no specific appropriation of land for a military reserve had ever been made at Camp or Cantonment Leavenworth at the date of the supplemental treaty. If a reserve had been set apart, the records of the War Department ought to demonstrate the fact. And even if an appropriation had been made by metes and bounds before that time, it was competent for the treaty-making power to dispose of the land, or any part thereof, to the Delaware Indians. The treaty describes the boundaries thus: "Up the Kansas river to the Kansas line, and up the Missouri river to Camp Leavenworth, and thence by a line drawn westwardly, leaving a space ten miles wide north of the Kansas boundary line for an outlet." "To Camp Leavenworth," and not to the southeast corner of a military reserve at Fort Leavenworth. And again: thence by a line (and not by a succession of zigzag lines) drawn westwardly. Whence? From Camp Leavenworth, and not from the southeast corner of a military reserve at Camp Leavenworth. The surveyor states that no provision had been made for a reserve by the treaty; but, it being desirable, he made the surveys about the garrison with a view to a reservation to extend six miles on the Missouri river, and four miles back.

I repeat, the surveyor was not authorized to set off a reservation of land; and, although the Delaware Indians may have assented to the use and occupation of a portion of the land of his tribe by the military department, he had no authority, by the terms of the resolution under which his appointment arose, or from his nation, as far as we know, to make such a grant. It does not appear that any consideration passed, and all that can be claimed from the act of the Indian, in my opinion, is, that he was willing to accommodate his father with the occupancy of a piece of the land for the use of his soldiers.

But there is in this office the original draught of a paper alluded to in the instructions to the surveyor as sketch No. 1, a copy of which I also send you. It was drawn by the then Secretary of War, Hon. John H. Eaton. It shows conclusively the views of the War Department

at the time, and proves that there was then no military reservation at Camp Leavenworth; and shows that the head of the War Department instructed the surveyor to make (as the treaty required) a direct line from Cantonment or Camp Leavenworth to the "point ten miles above, north of the northeast corner of the Kansas reservation." (I use his language.)

The very limited information in the possession of the government at that day did not enable the Secretary of War to understand the relative courses of the Missouri and Kansas rivers, or the relative position of the camp and the Kansas corner; but the line is there—a *direct* line, and not one of zigzag form—and any other lines made by the surveyor were in violation of his instructions.

It is admitted that the United States has been in the occupancy of the land a sufficient period of time to acquire title by possession, but it is not for a moment to be supposed that a great government would avail itself of such a defence in such a case. And I submit that it could not do so successfully, the case being similar to that of a guardian occupying the lands of the ward.

The treaty of May 6, 1854, between the United States and the said Delaware Indians, does not regard these acts of Mr. McCoy, or the possession of the land by the military department, as vesting any title in it to the United States; but, on the contrary thereof, the Delawares in the first article cede the precise country described in the supplementary article to the treaty of October 3, 1818, to the United States; and in the second article, the United States agree to have the said ceded country (except the outlet) surveyed as soon as it can be conveniently done, and thereafter offered for sale, &c.; and in the third article it is agreed that the United States will pay the Indians the proceeds of the sales of the country provided to be surveyed by the second article.

In behalf of the Delaware Indians, therefore, I claim that all the land lying south of a direct line drawn from Fort Leavenworth (see Cantonment Leavenworth on the map) to a point ten miles north of the northeast corner of the old Kansas reservation, and which has been heretofore for many years in the possession and occupancy of the military department and called their reserve and over which that department has exercised jurisdiction, and on which they have made improvements, belongs to the Delaware tract, and is a part of the same which has been ceded by the Indians to the United States for their benefit.

I submit this view of the case to the consideration of the honorable Secretary of the Interior and honorable Secretary of War, and have to ask, if any doubts be entertained, that the opinion of the Attorney General be taken in the case.

If I be sustained in the view I have taken, I would then, as the guardian of the interests of the Delaware Indians, respectfully request that the War Department yield the possession of the land designated, and that it be immediately surveyed and put into market at public sale, as the treaty provides. The land is now considered exceedingly valuable, and if put into market early, it could, in my opinion, be sold for more money than it would likely bring in years to come, if

a sale be long deferred; and I am the more induced to make the request, because, in my opinion, there is now no further necessity, as far as the Indian service is concerned, for the continuance of a military post at that point—the new post up the Kansas, if well sustained, being ample for the preservation of peace among the tribes in that quarter. Besides, it is due to the truth to say, that recently, in my opinion, the influence of the fort has been used to encourage lawless conduct; and the point to which the adjacent tribes once looked for protection now encourages, and some of its officers participate in, acts of the most unjust character towards the Indians—acts which, if submitted to by the government, or if the government remain passive much longer, must despoil the Delaware Indians of the rights and interests to which they are entitled by the treaty of May 6, 1854.

As I heretofore informed you, the Secretary of War has misunderstood the points made in my unofficial letter to you from Fort Leavenworth. I did not intend to say that the new town site was on the land intended to be excluded by the contraction of the old reserve. The site alluded to by me is between the mouth of Three-mile creek and the southern line of the reserve. I have caused it to be marked down on a copy of the "map of the reduced reserve," alluded to in the letter of the Secretary of War, and have to express my regret that it was not placed on the original of the same, as that and the plat of the new city were both in the quartermaster's office at Leavenworth when I was there, the same surveyor having surveyed and platted the town, and was then at work just completing the map of a reduced reserve also.

On this copy of the map of the reduced reserve, I have also caused the westerly line designated in the treaty to be extended from Salt creek to the Missouri river, in red, so that at a glance it may be seen what portion of the improvements fall to the Delaware Indians, if the claim before made be sustained; and have the honor to transmit said copy herewith also.

Very respectfully, your obedient servant,

GEO. W. MANYPENNY,
Commissioner.

Hon. R. McCLELLAND,
Secretary of the Interior.

DEPARTMENT OF WAR,
Office Indian Affairs, June 30, 1830.

DEAR SIR: The conditional ratification of a supplementary treaty with the Delaware Indians, by the United States Senate, requires that certain surveys shall be made. The conditions are stated in the accompanying copy of a resolution of the Senate, and the lines to be run are defined in the first paragraph of the treaty aforesaid, and illustrated by a sketch which accompanies this, No. 1.

The Secretary of War, by the authority of the President of the United States, refers the execution of this trust to you. No detailed instructions are necessary, since these are ample in the treaty and the resolution of the Senate which accompanies it. You will be governed by them, and in every particular. To aid you with a better

view of the country contiguous to that which is to be surveyed and marked by you, I enclose a copy (No. 2) of Mr. Langham's survey of the Kansas reservation.

I am directed by the Secretary of War to say that your compensation will be at the rate of five dollars a day, for the time that you may be actually engaged in the execution of this trust; that you will be aided by an assistant surveyor, to be chosen by yourself, whose compensation will be at the rate of three dollars a day whilst actually engaged, and by a corporal's guard which will be detailed to report to you from Cantonment Leavenworth. This guard will perform the duties of axe-men, &c., and marking of the lines, and in aiding in the transportation of your supplies from place to place.

You will obtain of the Delawares a designation of their agent for which the resolution of the Senate provides, whose support will be allowed him, or a daily compensation equivalent to it.

You will be careful in all things to conform to the provisions of the resolutions of the Senate, in obtaining the certificate of the agent who may be appointed by the Delawares, and in transmitting the map of the surveys, &c., to the President of the United States, for his approval and signature, &c. You will be particular in making up your accounts; and these will embrace your own pay, at the rates mentioned, and your assistant's, and the number of days the guard may be with you, as to each man an extra allowance over the pay of the army will be made, at the rate of 15 cents a day. The voucher will be your own certificate that the whole is correct as stated.

You will engage in fulfilling this trust with as little delay as possible.

I have, &c., &c.,

THO'S L. McKENNEY.

Reverend ISAAC McCOY.

You are at liberty to engage as assistants trusty persons to act as chain-carriers, packers, &c., &c., the whole number not to exceed five or six, and their entire compensation not to exceed in all one hundred dollars a month. Far as practicable, you will furnish a description of the country through which you pass, its soil, productions, animal, vegetable, and mineral, and general face of it; also a description of the inhabitants as to general size, civilization, habits, &c.

JOHN H. EATON.

WAR DEPARTMENT,
Washington, January 27, 1855.

SIR: An examination, which I have just found opportunity to make, into the claim presented by the Commissioner of Indian Affairs in his communication of the 9th November, enclosed in yours of the 14th, has satisfied me that the Delaware Indians have no right whatever to any portion of the military reservation at Fort Leavenworth.

"Cantonment Leavenworth" was a military post some years before the Delawares had, by treaty, a home assigned to them in the adjacent country; and it does not appear from the terms of the treaty, or from the instructions given at the time by the Secretary of War, to have

been the intention of the government to remove that military establishment to make way for the Indians, or to curtail it or dispossess it of such contiguous lands as had been used or were necessary for the military purposes of the garrison. Now, the "camp or cantonment," as its designation imports, was not an enclosed military work, but a collection of temporary buildings for troops, disposed without absolute regularity, and with such considerable intervals, that some of them pertaining to the quartermaster's and subsistence departments are understood to have been at least two miles from the flag-staff. If the Delaware line had been run, therefore, in the way you claim, it would not only have cut off the most important and essential portion of the land pertaining to the post, but many of its buildings also, which would have been an advance of the Indian boundary not "to" (as the treaty required) but *through* Cantonment Leavenworth.

It is evident the government did not then contemplate, under the treaty, such a result or such a boundary as is now advocated by the Commissioner of Indian Affairs, and it appears the Delawares did not, as they seem then to have acquiesced in the survey made by McCoy of the reservation, and to have continued to do so for nearly twenty-five years.

If the Commissioner be correct, however, in the position that McCoy transcended his authority, and that his survey, therefore, in 1830 was illegal and void, this conclusion will not at all aid the claim of the Delawares to any portion of the military reservation.

On the contrary, it would in that case have more extended limits, and the boundary of the Delaware lands would, under the rule established by the decisions of the Supreme Court, be removed to a distance of three miles in all directions from the flag-staff—this being considered the point from which distances affecting the limits of the military post would be measured. (See opinion of Attorney General Butler, May 6, 1836, Ex. Doc. vol. 7, part 1, page 1037–8, and case quoted by him.)

With regard to the opinion advanced by the Commissioner as to the expediency of abandoning Fort Leavenworth, as no longer necessary for the Indian service in that quarter, I will merely observe that the post is maintained for other and more important purposes, of which he is not deemed the proper judge.

His remark that "the influence of the fort has been used to encourage lawless conduct," may be met by the reply, that his previous allegations of official misconduct on the part of the officers there, have not, so far as I have been informed, been sustained by any proofs, while they have been indignantly denied and repelled by the parties accused.

Very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

Hon. R. McCLELLAND,
Secretary of the Interior.

WAR DEPARTMENT, *November* 21, 1854.

SIR: I transmit herewith, for your perusal and consideration, the answers of Majors Maclin and Ogden, and Captain Hunt, to the charges of the Commissioner of Indian Affairs, that they were concerned in trespasses on the lands of the Delaware Indians.

Very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

The PRESIDENT.

DEPARTMENT OF THE INTERIOR,
Washington, December 26, 1854.

SIR: I am informed by the Commissioner of Indian Affairs, in a letter dated the 23d instant, that he has learned that the complaints or charges made by him against certain officers in the army, stationed at Fort Leavenworth, have been denied, and that he desires copies of the denials, &c.; and, in his behalf, I have the honor to request copies of the reports the War Department has received in relation to this subject, so far as it may be done consistently.

I am sir, very respectfully, your obedient servant,

R. McCLELLAND, *Secretary.*

Hon. JEFF'N DAVIS,
Secretary of War.

WAR DEPARTMENT,
Washington, December 27, 1854.

SIR: I have the honor to acknowledge your letter of yesterday, asking for copies of the reports received at this department in relation to the accusations made by the Commissioner of Indian Affairs against officers of the army stationed at Fort Leavenworth, Missouri, and to reply that the answers of those officers to the allegations of the Commissioner of Indian Affairs were some time since submitted to the President, and it was my purpose, as soon as they were returned to me, to furnish you copies of them. They have not yet been received. As soon as they have been, your request will be promptly complied with.

I am, sir, very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

Hon. R. McCLELLAND,
Secretary of the Interior.

WAR DEPARTMENT,
Washington, January 15, 1855.

SIR: Referring to my letter of the 14th October last, in answer to yours of the 11th of same month, communicating extracts from a report of the Commissioner of Indian Affairs respecting pre-emption claims made by certain officers of the army on the lands of the Delaware Indians, near Fort Leavenworth, you will find that orders had been given to obtain from the commanding officer at Fort Leaven-

worth a report of the facts of the case. I enclose a copy of the letter of the adjutant general to him to that effect.

On the 20th November a communication was received from Major M. S. Howe, second dragoons, commanding Fort Leavenworth, transmitting the replies of Paymaster S. Maclin, Brevet Major E. A. Ogden, and Captain F. E. Hunt, fourth artillery, to the charges of the Commissioner.

These replies were at once submitted to the President, as you were informed in my letter of the 27th December, in answer to yours of the 26th, asking, in behalf of the Commissioner, for copies of them.

They have only this morning been returned by the President, and I herewith transmit copies of them.

Very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

Hon. R. McClelland,
Secretary of the Interior.

ADJUTANT GENERAL'S OFFICE,
Washington, October 16, 1854

SIR: I enclose a communication from the Secretary of the Interior of the 11th instant, in relation to trespasses on the lands of the Delaware Indians in the neighborhood of Fort Leavenworth; to the conduct of Major Maclin, paymaster, and Brevet Major Ogden, assistant quartermaster, in connexion with these trespasses; the employment of soldiers; the use of public property, (tents,) &c.; and to the removal of intruders from the Indian lands.

The Secretary of War directs that you report to this office the facts of this case as early as practicable.

Very respectfully, your obedient servant,

S. COOPER,
Adjutant General.

Captain F. E. Hunt,
Fourth Artillery, Commanding Fort Leavenworth,
Kansas Territory.

FORT LEAVENWORTH, *November* 4, 1854.

COLONEL: Your letter of date 10th October, addressed to Captain F. E. Hunt, 4th artillery, commanding officer at this post, with its enclosed, a copy of a letter from the Hon. R McClelland, Secretary of the Interior, to the Hon. Jefferson Davis, Secretary of War, of date October 11, 1854, was handed me on the 31st ultimo. As I have been but a short time at the post, I know nothing in relation to the accusation of the Commissioner of Indian Affairs, except that on the day of sale mentioned by the Commissioner I saw that one house, two huts, one saw-mill, and some tents, had been erected on the site of what was called "Leavenworth," some two or three miles below the garrison, on the same bank of the river. I have since that time traversed the new boundary line (of that portion of the military reserve on the west

side of the river) as pointed out to me by Captain Hunt, who also pointed out the corners of the old reserve (on same side of the river.) I found on the old reserve, and outside the new line, several evidences of settlements, some of which I saw on the 2d of July last. I did not suppose that it was intended the commanding officer should take testimony in the case; therefore, I thought justice required that I should give the accused parties the opportunity to meet the accusation in its present form, in the same manner it was alleged, viz: by a written communication; I therefore directed the post adjutant to furnish Major Maclin, Brevet Major Ogden, and Captain Hunt, each, with a copy of your letter; also a copy of the copy from the Hon. Secretary of the Interior to the Hon. Secretary of War, and directed those gentlemen to furnish me, as soon as practicable, with all the facts in the case within their knowledge.

I have now the honor to enclose their communications, marked A, B, and C.

I am, sir, very respectfully, your obedient servant,

M. S. HOWE,
Major 2d Dragoons, Commanding Post.

Col. SAMUEL COOPER,
Adjutant General U. S. Army, Washington, D. C.

FORT LEAVENWORTH, K. T.,
October 31, 1854.

SIR: Your communication of to-day, enclosing a communication from the adjutant general of the army, of the date of the 16th of October, enclosing a communication from Hon. R. McClelland, Secretary of the Interior, to Hon. Jefferson Davis, Secretary of War, which communication is principally a copy of a letter from Colonel Manypenny, Commissioner of Indian Affairs, dated at Fort Leavenworth September 26, has been received, and, in obedience to the order of the commanding officer, I reply to it; restricting myself to certain parts, which attack particularly my official capacity as commanding officer of this post, leaving to Majors Maclin and Ogden the duty of replying to the attacks made on them, which, I have no doubt, they will do to the perfect satisfaction of the Secretary of War. Colonel Manypenny states, in writing of the acts of Majors Maclin and Ogden, in connexion with the town tract of 320 acres, that "the soldiers were employed to help build their pre-emption shanties, cut the brush, &c." This charge I pronounce unequivocally false and without foundation, for I was in command at the time, was responsible for the men, and know they were not so employed.

As the commanding officer of this post at that time, I was the only person who could use the military to drive off any one from their claims, and I know I never drove any one off or threatened them with the military. As regards the "urgent request that steps be taken by the War Department with a view" "to remove all the people from this town site," (Leavenworth,) and that "all the principal evidences of claims on the Delaware land near the reserve be demolished," and says that "Captain Hunt can do it without difficulty," and that "it will cure

everything," I have only to say that I presume some three thousand persons have made claims upon the Delaware lands. Whether they are protected by law or not, I, of course, am not the person to decide; but if ordered by proper authority to undertake to remove them, I certainly should use my best endeavors to do so, although I, for one, believe that blood would flow in the attempt, and that freely, notwithstanding the opinion of the Commissioner of Indian Affairs that "it can be done without the sacrifice of life or limb." As regards the limits of the military reserve, I am not aware that the Commissioner of Indian Affairs has any supervision over it, and, in my opinion, no man who is himself pure would make the charge Mr. Manypenny has made against me, that "this reduction leaves a strip of land between the Indian land and the diminished reserve, and this even before the survey had placed upon it the necessary monuments according to squatter law, to enable the military men here and their friends to have each a pre-emption claim of land worth from $10 to $30 per acre," "valued, under the excitement of the times, at $50 per acre," unless he had evidence convincing and beyond doubt. I pronounce this charge false, and dare any man to the proof.

The commanding officer and Secretary of War have the information necessary for understanding the survey of the reserve. The locations were made long before any person at this post knew where the bounds of the reserve were, and on the strip which I supposed, from the best information I could get, was entirely without the reserve. There are twenty-two of these locations, many of them made before I came in command; and instead of being my friends, I only knew three by sight prior to their making their locations. I have made no location myself, neither have I any lot or part with any one that has, either directly or indirectly.

With respect to the statement that "neither the commandant of the post or Major Ogden or Maclin are here at present"—that is, when the Commissioner of Indian Affairs passed—if it is intended merely as stating a fact, it is true; but if intended to cast censure, as would appear from the tone of the letter—to imply that we were neglecting our duty, this charge also is false Major Ogden was absent on duty at Fort Riley, Major Maclin on thirty days' leave granted by General Clarke, and I on seven days' leave on a visit in the Indian country, to Fort Riley, which visit the regulations of the army require me to make, in order that I may become acquainted with the country about my post; and as I have only had twenty-seven days' leave, including this one, since 1846, (my service since that time having been in Mexico, Texas, and this Indian country,) I think you will perceive my duty has not been neglected.

I am, sir, very respectfully, your obedient servant,

F. E. HUNT, *Captain 4th Artillery.*

Lieutenant E. McK. HUDSON,
Post Adjutant, Fort Leavenworth

FORT LEAVENWORTH, KANSAS TERRITORY,
November 1, 1854.

SIR: I had the honor last night of receiving, through the post adjutant, your note, enclosing the letter of the Secretary of the Interior to

the Secretary of War, directing me to give you all the information in my power relating to the matters referred to.

Colonel Manypenny, Commissioner of Indian Affairs, charges—1st, That I was one of the "prime movers in projecting the new town site of Leavenworth, some two and a half miles below the fort, and in the Delaware tract, and have enlisted with me thirty other persons."

The above is a misrepresentation. Some thirty persons residing in this Territory and in the State of Missouri associated themselves together for the purpose of making a town. Two of the company previously located, under the squatter regulations, one hundred and sixty acres each, lying on the Missouri river, upon which they placed the town of Leavenworth. I was not aware such a project was on hand; some time after this, however, I was notified that I had been voted in as one of the association at one of their previous meetings, and requested to attend their next. This was without my solicitation or knowledge; the charge, consequently, that *I was one of the "prime movers," has no foundation* in fact. I ask, therefore, that the charge, under the above statement of facts, be assigned such a disreputable position as all just-minded persons will say it is entitled to.

Second charge of the Commissioner: That I have been "engaging settlers to make claims adjacent to the military reserve, and for miles distant on the Delaware lands, hoping thus to make force to aid me."

I have not at any time induced individuals to settle on the Delaware lands; the settlers are, with a few exceptions, strangers to me, and I did not care where they settled—whether on the Delaware lands or not. I declare, therefore, that I have not engaged settlers to make claims on the Delaware lands.

What position shall be assigned the above charge? It cannot be insisted on that it should have a more honorable position than its predecessor; they have the same origin, the same object, and are entitled to equal credit.

Third charge of the Commissioner: That in order to induce persons to purchase lots, I had circulated the story that "the government had made a special grant of 320 acres for the town, and that, therefore, there could be no difficulty about titles."

It was believed that the general law of 1844, in relation to town sites, would apply to this as well as to other Territories; but that a special law had been passed for the benefit of the town of Leavenworth. No one ever entertained any such idea. I never heard of it before seeing it in Manypenny's letter to the Secretary of the Interior. That I had circulated the story for the purpose of inducing persons to purchase lots is destitute of truth, and by making the charge the Commissioner has forfeited the character for veracity he may have previously sustained.

Fourth charge of the Commissioner: That "soldiers were employed to help build my pre-emption shanties, cut the brush, &c., &c., and government tents used at the time."

I am at a loss how to characterize this charge. I have not now, nor ever had, a pre-emption shanty in either of the Territories of Kansas or Nebraska. I have never used, in this or any other part of the United States, soldiers for private purposes; I have no power to

use the troops for the purpose charged. But as this is more properly a charge against the commander of the post (Captain Hunt,) and who is fully able to protect his own honor, I deem it unnecessary to examine the charge further; only to add, that if the Commissioner had been as studious in learning the workings of the military system of his country as he seems to have been in framing groundless charges, he might, perhaps, have been of some service to his government.

Fifth charge of the Commissioner: That "all the employés of any influence in the quartermaster and pay departments are interested in the matter."

I beg to state a fact the Commissioner seems ignorant of: that there is only one employé in the pay department in this district, (my clerk,) who has not now, never had, and never sought to have one particle of interest in either of the Territories of Kansas or Nebraska. Allow me to ask, sir, what ought to be done with charges of this character, and with the individual who dare make them against a person he never saw, and does not know? He has violated a great moral principle every person ought to hold sacred.

To cap the arrogance of the Commissioner, he recommends not only that I be cashiered and dismissed the service, but that Major E. A. Ogden be cashiered and dismissed the service, who doubtless has rendered more efficient and valuable service to his country every year, for the last twenty, than the Commissioner has during the whole course of his existence.

In conclusion, I will remark that my happiness does not depend upon the success or failure of the town of Leavenworth; but the idea of turning out of house and home, in the midst of cold weather, without any other arrangements for their protection and comfort, several thousand families, is shocking to humanity, inconsistent with the action of the government for many years, and I do not entertain the thought that the Secretary of War will yield to any such recommendation.

I hope, sir, you will urge the Secretary of War to require Commissioner Manypenny to make his charges good against me, or give up a position he has shown himself unworthy to hold.

I have the honor to be, sir, your obedient servant,

SACKFIELD MACLIN,
Paymaster U. S. Army.

Major M. S. Howe, U. S. A.,
Commanding Fort Leavenworth, Kansas Territory.

Assistant Quartermaster's Office,
Fort Leavenworth, November 3, 1854.

Sir: The Commissioner of Indian Affairs, on occasion of his last visit, prepared for his duties in the Delaware country by a protracted and close communion with those religious and official friends, south of the Kansas, whose aid, last winter, in manufacturing treaties, resulted in so much mutual benefit.

Under the potential influence of these gentlemen, who are so bitterly opposed to any arrangement that will defeat speculation in Delaware lands, the Commissioner visited the Indians only to repeat the exhortations of his agent to them against a change of treaty; and came to

this post breathing threatenings and slaughter against the settlers, denouncing even the officers who sympathized with them in their trouble as "guilty of conduct for which they ought to be cashiered."

During his brief stay here he spent much of his time, as I understand, with persons whose animosities or whose interests rendered them likely to give the most perverted representations respecting the parties concerned in the town of Leavenworth. Under such influences, and with such "reliable information," the Commissioner wrote the scandalous libel upon Major Maclin, Captain Hunt, and myself; for a copy of which, through the commanding officer, we are indebted, not to the manly courtesy of the Commissioner, but to the justice of the Secretary of War.

The malice of one or two personal enemies, with an activity truly wonderful, has, for a year or two past, given me ample experience in being traduced; but this communication of Mr. Manypenny's excels them all in outrage, and deserves, for a reply, nothing but the shortest and most opprobrious of epithets. And the writer who thus pens, in secret, base calumnies against officers long tried and trusted in the public service, has, more than any other official, complained, in the public prints, of being slandered; and certainly—so far as popular impressions go—has, more than any other, pressing occasion to crave a charitable judgment.

Mr. Manypenny's charges may be summed up thus:

That Major Maclin and I were "the prime movers in projecting the town of Leavenworth, upon Delaware lands, having enlisted with us thirty others;" that we have "urged settlers to make claims for miles distant, hoping to make force to aid us;" that we are the "principal instigators in the lawless course of the settlers;" that "soldiers were employed to build our pre-emption shanties, cut brush, &c.;" that, to "induce the purchase of lots in the town of Leavenworth, we had given out that the government had made a grant of the site," &c.

And the Commissioner, animated by a special hostility against the *opposition town*, earnestly asks that it may be demolished; "which," he adds, with singular frankness, "*would cure everything.*" Sealed bids, on which the Commissioner has hitherto so much relied, he begins to fear, will not be a sufficient remedy for the difficulties in the way of land speculations, and so houses must be demolished, and hundreds of families be turned out of doors at the approach of winter, and the coveted domain be kept, by bayonets, two years tenantless, until auction sales shall effectually "cure everything."

It is from no respect to the Commissioner that I force myself to notice his charges in detail. They are so utterly destitute of the smallest admixture of truth that I can do little less than meet them with a flat and unwaived contradiction.

I say, then, 1st, that Major Maclin and I were not the projectors of the town of Leavenworth, and had nothing to do with originating the association for that purpose. We have not urged persons to settle on the ceded Delaware lands, and had no reason for doing so. The town of Leavenworth, in which, in common with two hundred others, we now own a small and subordinate interest, was started, and fifteen hundred claims made on the ceded lands, two months before the Dela-

ware treaty was published here, and three months before the appearance of the Attorney General's opinion upon the pre-emption law of the 22d July.

2d. I can say for myself, (and it is unnecessary for me to include Major Maclin,) that I have never been—here or elsewhere—an "instigator of lawless proceedings." The settlers on the ceded Delaware lands—numerous as they are, and indignant at the extraordinary and unexpected terms of the treaty—are naturally inclined to think of some united effort for securing themselves from ruin. They will bear me witness, that I have earnestly advised against all combinations for resistance, and the avoidance of all lawless proceedings. I have heartily sympathized with them, I admit; for I know most of them as respectable citizens, who mind their own business, and do not slander their neighbors; who made their claims in good faith, confidently expecting the usual benefits of the pre-emption law; and, having embarked their all in their new establishment, would be utterly ruined if the measure the Commissioner proposed *could be executed.*

3d. Neither I, nor any other person connected with the town of Leavenworth, ever employed their soldiers to build pre-emption houses, cut brush, &c. For the preparation of the town site, citizens were hired at high wages, and provisions, tools and tents purchased at an aggregate expense, as I understand, of three thousand dollars.

4th. It is equally untrue that Major Maclin or I ever sought to induce the purchase of lots, at a public sale in Leavenworth, by the deceptive statement that a grant had been made of the site from the government.

Since, then, the charges of this guardian of the "poor Indian" seem to be so utterly baseless, it is natural to ask what *could* have led him into a position where three responsible men point the finger at him as a *wilful* calumniator! Was it "his sympathy for the poor Delaware?"

Sir, in my opinion "the poor Delawares," for whom all this virtuous indignation is assumed, are a combination of insatiable speculators and land-sharks, who are just now very much afraid of losing their prey, and my undisguised sentiments on that subject have, I presume, given me the honor of such a malignant notice from the Commissioner.

Hoping the gentleman will now turn from the army to his own department, where he can have ample employment in regulating abuses, I submit my acknowledgments of his attentions to me for the inspection of the proper authority, and remain,

Very respectfully, your obedient servant,

E. A. OGDEN,
Assistant Quartermaster.

Lieut. E. McK. HUDSON,
4th Regiment Artillery, and Adjutant, Fort Leavenworth.

WAR DEPARTMENT,
Washington January 18, 1855.

SIR: I have carefully considered the papers which you referred to me respecting the entry of certain persons with a view to settlement

upon the lands recently ceded by the Delaware Indians. They consist of reports from the Department of the Interior, enclosing communications from the Indian office, in which the entry of these settlers upon these lands is complained of as a trespass in violation of the treaties with the Indians, and a petition from some of the settlers in vindication of their conduct, and praying that, if the course they have pursued, preparatory to purchasing and settling upon these lands, be not lawful, a new treaty be made with the Indians which will open the lands to settlement.

This subject has been heretofore brought before this department, on the suggestion of the Commissioner of Indian Affairs, that military force might be needed to remove the settlers, as provided by the act of March 3, 1807, which is in the 16th article of the treaty extended to the lands thereby ceded, as far as its provisions are applicable.

On referring to the provisions applicable to the case, they seem simply to declare forfeited all claim, title or interest, which persons occupying, or marking out, or making settlements upon any portions of such lands, may have in such lands, and to empower the President to direct their removal therefrom by the marshal, aided, if necessary, by the military force.

The act does not forbid the entry of persons upon the public lands or attach any penalty thereto beyond the forfeiture of any title they may have to said lands; nor does it render it obligatory on the President to order the removal of such persons; the propriety of so doing is left to his discretion, and, in fact, the whole purpose of the provisions respecting the removal of settlers is to confer upon the President the power to clear the public lands of every class of occupants except those holding under titles granted or conferred by the United States.

There is in the act no provision which would oblige the President at once to exercise such power, and clear the public lands of settlers. The power is discretionary, and a consideration of the purpose for which it was granted is necessary to determine the cases in which it should be exercised. That purpose I judge, from the terms of the act, the circumstances of the country at the time of its passage, and the action under it, to have been principally, if not exclusively, to protect the public lands from a class of settlers who, claiming by title vested prior to the cession to the government, or by other adverse title, and having possession, would be in a position advantageously to contest the title of the government, and force a resort to actions of ejectment, attended with trials by juries drawn from the neighborhood, and with other circumstances, rendering the proceedings dilatory and uncertain in their results. Some remedy more speedy and certain than innumerable trials of this kind was obviously necessary to protect the rights of the United States, and it was furnished in the act of 1807; but I have no idea that it was ever intended to require, or even to authorize the indiscriminate removal of all settlers from the public lands—men whose very presence upon the land, and still more their labors, daily add to its value, and who, while interfering with no purpose of the government, acknowledge its title, and stand ready to

purchase whenever it is ready to sell. Such settlers, so far from being the object of prosecution, have uniformly been favored by the government, and Congress has never failed to follow them with pre-emption laws, securing to them the narrow limits of their unauthorized settlements—not as a weak concession to men acting in defiance of law, but as a measure of justice to those who, conscious of meditating no injury to the public property, and no violation of the spirit of the statutes, yet place themselves at the mercy of the government in expending their toil upon its domain.

Such I believe to be the application of the act of 1807 to all the unsurveyed public lands of the United States, and I am unable to perceive any legal distinction between a trespass upon these lands and the lands ceded by the Delawares, which would require the act of 1807 to be applied to the latter in a sense which it would not receive in regard to the former.

By the Delaware treaty their lands have been absolutely ceded to the United States, and are to be sold as other public lands are sold, but the net proceeds are to be held for the use of the Indians. "The legal title, domain, and jurisdiction, are in the United States;" and all the provisions of the public land system are expressly made applicable to them, with exception of the grant of pre-emption rights which the Attorney General has decided do not attach to settlements on their land. But this exception does not affect the question. If it was meritorious, or at least permissible, to trespass upon unsurveyed lands, and to improve them with expectation of being enabled to purchase at a fixed price, why should it not be so to improve them with the chance of purchasing at auction prices? and this, I believe, constitutes the only difference between settling on lands to which pre-emption laws apply, and those to which those laws do not apply.

I am clearly, therefore, of opinion that, so far as is shown by reports placed in my hands, the persons who have entered upon the Delaware lands have not thereby committed a violation of the treaty; and while the President undoubtedly has power to remove them, no sufficient reason has yet been shown for the exercise of the power. On the contrary, I am satisfied that, while the act in question fully protects the interest of the Indians, and secures from controversy the title of the lands, the settlement now making upon them will greatly enhance their value.

But the pecuniary interest of the Indians is not the sole consideration which should determine the action of the Executive in this case. It is a matter of notoriety, and as familiar to the Indians, probably, as to the whites, that the object of this government was "the speedy settlement of the country;" and that, in so many words, is one of the declared objects of the power vested in the United States by the said article of the treaty for the sale of their lands. The exploration of the country by intended settlers, the selection of lands, the marking out of their locations, and the commencement of improvements, all conduce to this object; and unless they threaten, in some way not yet stated, the interest of the Delawares, I see no reason for arresting their progress. Should it, however, be shown that these proceedings on the part of the settlers conflict with the interests of the Indians, I

would recommend that the latter be provided for by a supplemental act, as contemplated in the 15th section of the treaty, or by a new treaty, rather than that the settlement of the country be arrested, the settlers who have gone thither be exposed to loss, amounting in most cases to ruin, and the military force brought into conflict with peaceful citizens, albeit they may be trespassers upon the public lands held for sale, but not offered, because not surveyed.

It may be proper to remark that the foregoing considerations do not apply to the lands ceded by the Ioways and the Weas and Kaskaskias, as in treaties with these tribes it is stipulated that no settlements shall be made upon their lands before survey. No special reason appears for this provision in the treaty with the Ioways, but it is necessary to the fulfilment of the treaty with the Kaskaskias and Weas, as they have the right to select lands for themselves after the survey; and no settlement can be permitted before their selection shall have been made.

Very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

The PRESIDENT *of the United States.*

DEPARTMENT OF THE INTERIOR,
Washington, January 30, 1855.

SIR: I transmit you herewith a copy of a communication from the Commissioner of Indian Affairs, dated the 20th instant, on the subject of your letter of the 15th, addressed to this department, in relation to alleged trespasses on the lands of the Delaware Indians in the neighborhood of Fort Leavenworth.

I have the honor to be, very respectfully, your obedient servant,

R. McCLELLAND,
Secretary.

Hon. JEFF'N DAVIS,
Secretary of War.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, January 20, 1855.

SIR: I have the honor to acknowledge the receipt of the letter of the Secretary of War, addressed to you on the 15th, with its enclosures; all which were referred to me from your office on the 16th instant.

The letter of the Secretary of War covers a copy of an order from the adjutant general of the army, dated Washington, October 16, 1854, addressed to "Captain F. E. Hunt, fourth artillery, commanding Fort Leavenworth, Kansas Territory," the report of Major M. S. Howe, dated November 4, 1854, on whom the duty assigned by the adjutant general to Captain Hunt devolved, with copies of communications from Captain Hunt and Majors Maclin and Ogden, dated, respectively, the 31st October, 1st and 3d November, 1854.

The duty which the adjutant general devolved on the commanding officer at the post, in compliance with the order of the Secretary of War, was to report all the facts "in relation to trespassers on the lands of the Delaware Indians, in the neighborhood of Fort Leavenworth, to

the conduct of Major Maclin, paymaster, and Brevet Major Ogden, assistant quartermaster, in connexion with these trespasses, the employment of soldiers, the use of public property, (tents,) &c., &c., and to the removal of intruders from the Indian lands." The adjutant general accompanies his order with a copy of a communication from the Secretary of the Interior to the Secretary of War, of the date of October 11, 1854, to the contents of which he does not specifically allude; but which, it is understood, contains extracts of a letter from me to the Secretary of the Interior, dated at Fort Leavenworth, on the 26th September, 1854, having express reference to the subject-matter of the trespasses on the Delaware lands, and the participation of Majors Maclin and Ogden in those lawless proceedings.

Since the receipt at Washington of the "replies" of Captain Hunt and Majors Maclin and Ogden, the superintendent of Indian affairs at St. Louis had occasion to visit Kansas Territory and Fort Leavenworth; and, had they been in my possession, notwithstanding their insufficiency as a full report of all the facts in the case, I would have availed myself of the occasion of his visit there to ascertain whether any of the charges made by me in my letter of the 26th September last were unfounded; and if so, it would have been my pleasure, as well as duty, to make the proper correction. But from the character of these "replies," and their evasion of known facts, I shall want other testimony before I am prepared to change or vary any statement made by me, even though based on "reports."

I do not perceive that the parties to whom this investigation and report were intrusted have attempted, in the least particular, to carry out the order addressed to them.

The Secretary of War, in his letter to you of the 14th of October last, recognized the obligation and duty resting on his department in the premises, and he will doubtless, in the end, see that these are fully met, when it will be shown whether I was justified in addressing you fully as I did on the occasion referred to or not.

I gave the "reports" of the country, and said I had the best reasons to believe them.

On the morning of the day that I wrote that letter, I saw in the back room of the quartermaster's office, at the fort, the unfinished map or plat of the town of Leavenworth in the hands of the surveyor, John C. McCoy, esq., who had finished the survey of the town lots, and was completing the map or plat of the same, to have it ready for the sale of the 9th and 10th of October. He also had upon the same table, in the same room, the map or plat of the reduction of the military reserve, made by him "in conformity with the instructions of the Secretary of War," which last-named map or plat is now, I presume, in the War Office. This plat of the survey of the reduced military reserve was made "under the direction of Captain F. E. Hunt, 4th artillery;" and while under his "direction," the town of Weston, on the opposite side of the river, in Missouri, and the adjacent islands in the river, were placed on the plat, the new town of Leavenworth, laid out adjoining the reserve, and on the Delaware land, was, I cannot doubt, intentionally omitted On the same morning I observed on the door of the large stone warehouse at the fort a printed handbill, signed by

Major Maclin, Amos Rees, and Lorenzo D. Bird, "trustees," headed "*Town of Leavenworth.—Great sale of lots.*" The advertisement said, "There will be a great sale of lots at this new and promising town, adjoining Fort Leavenworth, on Monday, the 9th day of October, 1854." It spoke in glowing terms of the surrounding country, of the prospects of this city in embryo, and promised the greatest liberality in the sales to those who first try their fortune in "the great city of the west." And purchasers were assured that the "proceeds of sale, after paying all expenses incurred by the association, to be deposited in St. Louis until title is assured, through us or otherwise, to the purchaser, and in default of which the money to be refunded." This handbill was dated the 22d September, 1854. I also saw another advertisement signed by Major Maclin and his two colleagues, "trustees," informing the public that the sale would continue two days, and that the steamers Polar Star and Clara would be at the town landing, for the purpose of accommodating persons attending the sale, and that the money derived from the sale would be deposited at St. Louis, with good security, until a perfect title was insured from the United States. I also saw the card of "F. Hawn" in a Weston, Missouri, paper of the 14th of September, headed "*Delaware squatters, beware of the military,*" in which he stated, that on the Saturday previous Major Maclin had ordered him not to continue building on his claim on Three-mile creek, as his house would be torn down; that the major afterwards threatened to put one of his workmen in the guard-house; and that his house was afterwards torn down by this officer's orders, "in the presence of Major Ogden," &c. Copies of each of these papers are now in this office, and they, with what I observed in the quartermaster's office, and the statements made to me in the country, were, I think, of such a character as to warrant my statement, that I had the best reason to believe the truth of the "reports;" and in the discharge of my duty I could not have done less than to call your attention to the condition of things at Fort Leavenworth, as I did in my letter of the 26th of September.

I have not how, and shall not hereafter have, cause to regret that I warned the government, from the very headquarters of these lawless proceedings, of the acts of Major Maclin and Major Ogden, and of the absolute necessity for at once adopting efficient measures for executing the treaty stipulations and protecting the rights of the Delaware Indians.

I respectfully call your attention to the "replies" of these officers, who evince in them, in my judgment, little regard for duty and great facility in the use of epithets.

Captain Hunt admits that twenty-two claims were made on the land excluded from the military reserve, by his reduction of the same; but denies that his friends made any of them. I did not say that they did; and, indeed, I made no charges against this officer. Neither the Secretary of War nor the Adjutant General thought so, as is very apparent from the letter of the latter to the commanding officer, requiring a report of the facts in the case. Indeed, when I returned to Washington, I stated, in a conversation with the Secretary of War, that Captain Hunt was not implicated, as far as I knew. The indig-

nation manifested on his part was, therefore, gratuitous. But, if he knew there were twenty-two claims there, could he not state the names of the claimants, and then others could judge whether any of them were army officers or their friends. As Captain Hunt has volunteered to defend himself against charges I never made, I now state that I am led to believe that he has, from his own admissions now in the possession of this office, much of the responsibility of the unlawful attempts to settle the Delaware trust lands resting upon him.

On the 17th of July last, Messrs. Stringfellow, Miller, McHolland, and Gillespie, a committee appointed by a meeting of the citizens of Platte county, Missouri, and others, wrote a letter to Captain Hunt, accompanied by certain resolutions of the meeting, in which they expressly state that the general impression was, that no person would be permitted to occupy any portion of the Delaware lands, and asking information from him. The meeting seems to have been called because of certain "reports" that some of the army officers, employés, &c., about the fort, were engaged in getting up this town, the site of which the Missourians thought was on the military reserve. Captain Hunt, in reply, admits that a town "has been or is about being laid out, by persons in Weston and *two officers of the army stationed here*, near the mouth and north of Three-mile creek, which is off the reserve and on Delaware land. You will perceive from my instructions I cannot interfere." When the Missourians received Captain Hunt's reply, the same committee issued a card, headed "*Delaware lands open to settlement*," in which they say: "We have the pleasure of laying before the people the gratifying intelligence that the officer in command at Fort Leavenworth does not feel it to be his duty to prevent settlements upon the Delaware lands. And we feel *authorized to urge* the immediate occupation of all those lands, except the small strip on Kansas river intended for the permanent occupation of those Indians. * * * * We annex a correspondence with Captain Hunt, containing the orders of General Clark, and take pleasure in saying that he *will give all information on which every* [*person*] *may rely.*" The instructions of General Clark do not prohibit Captain Hunt from interfering; and I submit to you that herein is a grave matter, and here is the beginning of this lawless conduct, and at this point it is due that the most thorough investigation should be had. That there were early designs on this country, looking to its unlawful occupation, there cannot be the least doubt; and I am unable to believe that Captain Hunt gave the proper construction to his orders when he stated that he could not interfere in such a case as that presented to him. Under the law organizing Kansas Territory, there was abundance of land for emigrants to occupy and settle on, without attempting to intrude on the Indian trust lands or reservations.

Captain Hunt states in his reply that he is not the proper person to decide whether the persons who have made claims on the Delaware lands are protected by law or not; and yet it seems, from the card of the Missouri committee, that he kindly undertook to give them such reliable information in the month of July as induced some three thousand persons to make claims there!

In relation to the reply of Major Maclin, I have only to say that

the activity displayed by him in causing Hawn's house to be torn down, getting up handbills, chartering boats, &c., to promote the interests of the new town, are hardly consistent with his ignorance of the initiatory and unlawful proceedings connected with that speculation. If he had favored us with the date of the meeting at which he says he was "voted in" to the association, it might have been of some service in enabling others to judge of his true character and connexion therewith.

With regard to Major Ogden's reply, I have only to remark, that if ever an opportunity is presented, I believe I shall be able to make it appear that he was one of the original and prime movers in getting up this town, in pressing it forward, and in urging and encouraging settlements on the Delaware lands; and that from the position he has occupied, as a large disburser of public moneys among the people, his opinions and action have had a most pernicious influence.

He became the defender of the projected city from the assaults of the Missouri meeting before referred to, and closed a long communication for the press in this behalf thus: "If the persons interested in this scheme are violating any public or private right, they will deservedly lose the money they are freely investing in the enterprise. If proceeding, on the contrary, according to law and precedent, they improve their claims, secure their possessory right, and pursue, as I am very sure they will, a fair and liberal course in the disposition of their town property, all generous persons will heartily wish them success." In his published defence of the enterprise, he attempts to explain why this new town was permitted to have a start or beginning, on what the Missourians supposed to be the military reserve. He states that they had no definite knowledge of the military limits; that their boundary was fixed by a kind of tradition, and that while it was an Indian country it was not material; but that since the organization of the Territory, "and especially since the Delawares, by a change in their policy, have invited settlements upon their ceded lands, (which will soon, probably, become subject to pre-emption,) this southern boundary of the military reserve has become an object of great interest. A Virginia gentleman, who commenced researches upon this subject some months since in Washington, succeeded in discovering the original plat and field-notes of the survey of the Delaware boundary, and aided by the Delawares, readily found the landmarks of the initial point, on the Missouri river, nearly a mile north of Three-mile creek. Marking out and recording a claim upon this discovery of his, according to the rules established by the settlers generally, his example was soon followed by others, who made claims in the vicinity, both north and south of the creek in question As other squatters have done, they soon met for the purpose of adjusting their limits peaceably, and, in the absence of law and civil government, formed an association for mutual protection and the preservation of order."

Such is the manner in which this officer wrote and published on the 20th of July last, in "reply" to the arraignment of the Missouri meeting; and yet, in the face of all this, he has had the assurance to write one of the extraordinary "replies" which the Secretary of War

transmitted to you. Such contradictory statements as these two "replies" present, in relation to the same subject, leave no room for surprise that the individual who is the author of both should enter into an unlawful enterprise to appropriate the property of others to his own use.

His statement in relation to the discovery by the Virginian gentleman, of "the original plat and field-notes of the Delaware boundary," while it connects him with a very early knowledge of the enterprise, may be construed to involve the official integrity of myself and the gentlemen in the Indian office. If such paper was obtained here, it was a surreptitious act, and I desire to know the author of it.

I may add that this same officer (Major Ogden) attended a meeting of "squatters" at Leavenworth, on the 29th of September, was on the committee on resolutions, and was appointed chairman of a committee to prepare a memorial to the President of the United States, for a modification of the Delaware treaty; and on the day of the sale of the lots at Leavenworth, made a speech, and assured the people that if the title was then imperfect, it would eventually be made good and confirmed by the government.

Two of these officers, who were placed at this important post to protect the rights of the Indians and preserve peace on the frontier, it will be observed, admit themselves to have participated in proceedings which, in the opinion of the Attorney General, are unlawful; and one of them (Major Ogden) has the assurance to speak of the "*unexpected and extraordinary terms of the treaty.*" Now this modest assurance is known to you to be a direct attack upon yourself and all the officers of the government who took an interest in that treaty; for the "*extraordinary terms*" were not only acquiesced in by, but were inserted under the express sanction of, the President and yourself. And the bill introduced at the last session of Congress, by the Hon. Mr. Orr, chairman of the Indian committee of the House of Representatives, contained the same principle, and was endorsed, as I am informed, by the unanimous judgment of that committee.

Major Ogden commences his before-mentioned reply in the following words: "The Commissioner of Indian Affairs, on occasion of his last visit, prepared for his duties in the Delaware country by a protracted and close communion with those religious and official friends south of the Kansas, whose aid last winter in manufacturing treaties resulted in so much mutual benefit." I shall never regard it as a grave charge, that religious people are my associates in Kansas or any other place The insinuation in all its parts is as untrue as it is unmanly; and if Major Ogden will make any charge of collusion on my part, in a form so specific that I can meet it, or allege any act I have ever done, inconsistent with a faithful and disinterested discharge of my duties to the government and the Indian tribes, I will prove such charge or allegation false.

In conclusion, I have to remark that if military officers or others, on the frontier and in the Indian country, are permitted to organize themselves into courts to review the laws and treaties of the government, and the opinions of the Attorney General in relation thereto, and excite rebellion against them, it will be in vain for this depart-

ment to attempt to exercise any salutary control over those important interests which, by the laws of the land, are specially committed to its charge.

I respectfully request that this communication may be laid before the President for his consideration.

Very respectfully, your obedient servant,

GEO. W. MANYPENNY,
Commissioner.

Hon. R. McClelland,
Secretary of the Interior.

War Department,
Washington, February 3, 1855.

Sir: I have received your letter of the 30th of January, enclosing a copy of a letter to you from the Commissioner of Indian Affairs, dated the 20th ultimo, relating to the charges brought by him against certain officers of the army at Fort Leavenworth.

After a careful examination of the original charges, the answers of the officers thereto, and this elaborate rejoinder by the Commissioner, I do not see that he shows probable cause to justify him in bringing the charges.

Sufficient evidence will, I think, appear to you, of the intemperate spirit of the charges, in a single sentence of the Commissioner's last paper The three accused officers had, in obedience to the requisition of this department, returned answers to the charges of the Commissioner. Copies of these answers were transmitted to you, and communicated to him. Although these answers are in the main sufficiently distinct and pointed, the Commissioner treats them as a mere evasion and refusal to answer, and declares that he does "not perceive that the parties, &c , have attempted in the least degree to carry out the order addressed to them."

But I have now to ask your attention particularly to the charges of the Commissioner, the answers of the officers, and his rejoinder.

Although the loose style of the charges makes it difficult to specify the precise point of some of them, and although others of them are general charges without specifications of fact, yet the following may be taken to cover and express all that is material in them.

After some general statements to the effect that the Delaware Indians had been disturbed in mind by whites settling on their lands, and setting up pre-emption claims to them—that the principal claims were near Fort Leavenworth, and Major Ogden, quartermaster, and Maclin, paymaster, had been "the principal and main instigators to this lawless course of proceedings," and that if the reports he had heard and believed were true, those officers deserved to be cashiered, the Commissioner makes his specifications as follows:

1. That they were the prime movers in projecting the new town, two and a half miles from the fort, on the Delaware tract, and had enlisted with them some thirty other persons.

To this Major Maclin answers: That some thirty persons, residing in Kansas and Missouri, associated to make a town—that two of them had previously located, under the squatter regulations, 160 acres each,

on which they placed their site for a town. He then had no knowledge of the project. Some time afterwards he was, without his knowledge or solicitation, elected a member of the company.

Major Ogden's answer is: "That we were not the projectors of the town, and had nothing to do with originating the association; that they now, in common with 200 others, own a small interest in it."

2d charge: That after making this move in violation of the treaty, they had urged settlers to make claims adjacent to the military reserve, and for miles distant in the Delaware lands; hoping thus to have force to aid them.

Major Maclin's answer is: That he never induced any one to settle on the Delaware lands; that the settlers were, with few exceptions, strangers to him, and he did not care where they settled—whether on the Delaware lands or not.

Major Ogden's answer is: That he never urged persons to settle on Delaware lands, and had no reason to do it; that 1,500 claims had been made on the ceded lands two months before the treaty was published, and three months before the appearance of the Attorney General's opinion on the pre-emption law; that the settlers had made their claims in good faith; that they were greatly disappointed at the terms of the treaty; and that he had sympathized with them, but had advised against all combinations for resistance.

3d charge: That they have an advertisement out to sell lots; and to induce purchasers to buy, the story is rife that government has made a special grant of 320 acres for the town—and therefore there can be no difficulty about title. The meaning of this appears to be, that these officers were authors of the false report.

Major Maclin answers: That it was believed the general law of 1844 would apply in this case. He had never heard of any report about a special law for this town, and it is wholly untrue that he had ever put out such a story to deceive purchasers.

Major Ogden answers: That it is untrue that he ever made use of the deceptive statement as alleged.

4th charge: That soldiers were employed to build their pre-emption shanties, to cut brush; and government tents were used.

Major Ogden answers: That neither he, nor any person connected with the town, ever employed soldiers to build huts or cut brush; that the preparation of the town site was by hired citizens at a cost, as he understood, of $3,000.

Major Maclin answers: That he never had a pre-emption shanty; that he never employed soldiers, and had no power to do so; that the charge is properly a charge against the commanding officer.

Captain Hunt, the commanding officer, answers: "This charge I pronounce is unequivocally false, and without foundation. I was in command—was responsible for the men, and know they were not so employed.

5th charge: All the employés of any influence in the quartermaster and pay departments are interested in the matter; and when an innocent squatter not of their kind has attempted to make a claim near their land they have driven him off by threats of the military.

Major Maclin answers: That the only employé of the pay depart-

ment in the district is his clerk, who never had, and never sought to have, any interest in the Territories of Nebraska or Kansas.

Captain Hunt answers: That he, as commanding officer, was the only person who could use the military to drive off any one; that he never did it, or threatened it.

Major Ogden, in his answer, has not specially noticed this point in the Commissioner's charge about the employés of his department.

6th charge: The commanding officer has had a surveyor at work reducing the limits of the reservation. The reduction leaves a strip of land between the Indian land and the diminished reserve; and this strip, even before the survey, had placed on it the necessary monuments, according to squatter law, to enable the military men here and their friends to have a pre-emption claim of land valued from $10 to $30 per acre This diminution of the reserve is said to be under orders from the War Department—hopes the thing will be disapproved.

Commanding officer answers: "I pronounce the charge false: the locations were made before any persons at this post knew where the bounds of the reserve were, and on the strip which I supposed, from the best information I could get, was entirely without the reserve. There are twenty-two of these locations, many of them made before I came in command; and instead of being my friends, I only knew three of them by sight prior to their making their locations. I have made no location myself, neither have I any lot or part with any one who has. either directly or indirectly."

In regard to the imputations against the commanding officer in this particular matter, I desire it may be observed that the Commissioner was aware that the act of that officer was in pursuance of the orders of the War Department. Yet he makes it the ground of a gross charge against that officer, imputing it to him as an act done in the furtherance of a corrupt scheme, and undertakes confidently to disapprove an order of the department in a matter of which the department was the proper judge.

The only other matter in regard to these officers which the Commissioner has reported to you in his original complaint against them, and which you have brought to my attention, is conveyed in his statement that "neither the commandant of the post, or Major Ogden or Maclin, are here present." This appears to be presented as a charge against them of an improper absence from their duties It must have so impressed itself on your mind, as you extract it from his letter to communicate it to me. The commanding officer, as the proper officer to account for all neglects of duty in his command, answers the charge as follows:

"If intended merely as stating a fact, it is true. If intended to cast censure, to imply that we have neglected our duty, it is false. Major Ogden was absent on duty at Fort Riley, Major Maclin on thirty days' leave granted by General Clark, and I on a seven days' leave on a visit in the Indian country to Fort Riley, in accordance with army regulations, &c.;" the application of which he explains in the case.

I only refer to this point to show the temper of the Commissioner

towards these officers, and his desire to impute blame to them without cause, and to report proper and innocent facts as matters of accusation against them.

You will perceive that the essential charges against these officers, of which the military authority would take cognizance as military offences, are fully met in their replies. They each and all deny any employment of soldiers—any military or official interference whatever in the transactions he arraigns. He offers no proof—he pretends to no personal knowledge—he expressly rests his accusations on rumor.

On a careful examination of the report of the Commissioner to you of the 20th ultimo, after he had examined the replies of the several officers to his charges, I am compelled to say to you, I do not perceive in it any evidence of a desire to do justice to these officers, whose official and personal integrity he had so violently assailed; on the contrary, he sets out a declaration to the effect that they have neither made nor attempted a defence, and declines "*to change or vary any statement made by him, even though based on reports.*"

In regard to Captain Hunt, he denies that he made any charge against him. I consider that he brought charges, either direct or by necessary implication, against Captain Hunt, as the commanding officer of the post, imputing to him the grossest offences in point of morals, honor, and official duty. As, however, according to his views, Captain Hunt has "volunteered to defend himself," he now states he is led to believe "that Captain H. has much of the responsibility of the unlawful attempts to settle the Delaware trust lands."

The foundation of this charge, besides the provocation in Captain Hunt's volunteer defence of himself, seems to be that Captain Hunt, being addressed by persons who were engaged in settling on these lands, answered that he had no authority in the matter, and made known his instructions from General Clark, positively forbidding his interference. The Commissioner is pleased to see in this proper answer a connivance with the squatters, and a responsibility for their proceedings. I have to say that the instructions which govern the military at frontier posts, and in what concerns our Indian relations and the frontier settlements of our people, are framed according to my views of duty and policy; and I cannot consent that their refusal to assume powers not belonging to their commissions, or otherwise specially intrusted to them, and to employ the soldiers without authority against the settlers, shall be imputed as a corrupt collusion with violators of law.

The Commissioner, in his report of the 20th ultimo, refuses to retract his former charges against the officers, in connexion with the reduction of the military reservation and the misapplication of public means to private purposes, and the employment of the military force to effect or aid an unlawful seizure of public lands; but instead of adducing testimony to sustain his allegations on these points, he attempts to change the issue, by reiterating and enforcing his accusation, that they have been engaged with other speculators and squatters in effecting the settlement of the lands ceded by the Delaware Indians, and establishing a town site and selling town lots.

This department does not attempt to advise or control in the private

and pecuniary affairs of officers; to prohibit or permit investments in public or private lands. All that the department requires of them in this regard is, that attention to their private business shall not lead to neglect of their public duties; that no officer shall ever furnish any species or amount whatever of supplies to government; and that no disbursing officer shall engage in commerce in any article which can make a part of army supplies. As to the right of Majors Ogden and Maclin to acquire an interest in the town lots near Fort Leavenworth, or in pre-emption claims on public lands, it is clearly a matter beyond the official authority of this department. They have, in such cases, the ordinary rights of citizens—no more or less.

The Commissioner urges, with warmth, the removal, by military force, of settlers on the Delaware cession. I have communicated to the President my views, at length, on this subject. A copy of my letter to the President is herewith enclosed to you. The removal, it has been represented to me, could not probably be effected without bloodshed. The Executive is the judge of the propriety of such an extreme measure; and if found to be proper, the order would be addressed to the civil authority—the military having no connexion with the matter, unless and until called upon to aid the civil officers in the execution of the law.

Very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

Hon. R. McCLELLAND,
Secretary of the Interior.

109 Which was all the evidence offered by the United States of America, the complainants herein.

And thereupon the said defendant, James C. Stone, produced, offered in evidence, and read the following papers, documents, depositions, and maps, in words, figures, lines, and plats, as follows, to wit:

1. The said defendant offered and read in evidence the executive documents No. 58 of the 33d Congress, 2d session, and executive document No. 50, 33d Congress, 2d session, (Senate documents,) being the same documents thus described as before offered and read in evidence by the said complainants, and above set forth in printed form, as by consent and request of the parties above recited.

2. The said defendant then produced, offered in evidence, and read the deposition of John G. Pratt, taken on the part of the defendant, (exceptions to the said deposition having been filed by the said complainants, as above set forth in full.) The said deposition is in words and figures as follows:

110 Depositions of witnesses taken at Topeka, Kansas, before John T. Morton, clerk of the circuit court of the United States for the district of Kansas, and ex officio a commissioner of said court, to be used and read in evidence in a cause pending in said court, on the chancery side thereof, wherein the United States of America are complainants, and James C. Stone, John Connor, Ne-con-he-con, and Henry Tiblow, are defendants. Taken on the part of the defendant, James C.

Stone, and in the presence and by the consent of Robert Crozier, esq., U. S. district attorney, and Thomas Ewing and S. A. Stinson, esqs., counsel for said defendant, James C. Stone.

John G. Pratt, of lawful age, being duly sworn, deposes and says: I have resided in Kansas since the year 1837, as a missionary teacher to the Delaware and Shawnee Indians. In that capacity I have been brought into intimate contact with the Delaware Indians, and have lived with them exclusively sixteen years. During that time I have known about all the lands which they have occupied and claimed, and especially in the vicinity of Fort Leavenworth. The
111 lands which they claimed in the vicinity of Fort Leavenworth extend to the Kickapoo reservation, and their northerly boundary line extended easterly to the Missouri river from the Kickapoo reservation. The land occupied by the United States troops was not understood by the Delawares to be claimed by the United States, but was understood to be merely occupied by them. The lands I refer to are the lands lying south of the line I have before referred to, and were used for farming and agricultural purposes. I have heard the Delawares speak of these lands as theirs, and of government paying them a rent for them. This was the general idea expressed by them up to the time of the treaty of 1854. I am not so distinct in my memory as to the time since that treaty. I mean, that since 1854 I have not heard them speaking about receiving rent, but I have always heard them claim the land. I have been with them when they said they were returning from the fort, where they had been to receive their rents. I lived within 4½ miles of the fort about four years, having moved there in the fall of 1843. In passing to and from the fort the Indians generally passed by my house, and the
112 head chiefs, Capt. Ketchum and Nah-ke-mund, often stopped with me. The chiefs and Indians frequently conferred with me on their business transactions with the whites. The amount of the land put in cultivation south of the northern line I spoke of has been repeatedly enlarged, extending more in a southerly direction; not widening greatly east and west, but extending south I first became acquainted with the lands near the fort in 1837. In that year the amount cultivated was not more than one-half of what it is now. The Indians always looked upon this as an occupation of their land, and assumed that if the occupation did not cease they would be paid for their land by government. The rent was paid in money. The chiefs would sometimes stop at my house, when they had been to the fort for rent, and tell me about it. Ever since I have been in the country I have been connected with the Delawares, and intimately acquainted with their affairs. The two chiefs I spoke of were the representative business men of the tribe. They were head chiefs—old men; the other chiefs were younger. These two head chiefs are now dead.

113 *Cross-examined.*

Question. What, of your own knowledge, do you know of the Delaware Indians receiving rent for the lands you speak of?

Answer. I only know by what I heard the Indians say; I never saw it paid.

Question What Indians, now living, have you heard speak of receiving rent?

Answer. I can now speak of but one living—the others are dead. That one is Isaac Johnnycake. He lives with the Delawares, about twenty miles below Leavenworth.

Question. Do you know who paid to the Indians the rent you before referred to?

Answer. They said they got it at the fort. My understanding was, that it was the quartermaster.

114 Question. Do you know of the government at any time occupying lands south of what is now known as the "Fort Leavenworth military reservation."

Answer. I do. There were buildings erected, and enclosure made for grazing purposes, south-west of the reservation, about three miles from the Fort Leavenworth military reservation. The government also had a saw-mill on Stranger creek, on the Delaware lands, where they cut timber and sawed it, for use at the fort. The enclosure I refer to was built in 1852 or 1853, I think. I think the saw-mill was built about 1847.

Direct examination resumed.

I had the conversations with the Indians about receiving rent prior to 1847, as well as after, and as far back as my first acquaintance with them. I heard them say that the mill was put there without their consent; that they went to see the quartermaster at the fort about it, and he told them he would pay them for the trees "fifty cents a stump." I never heard that they received rent for the enclosure three miles from the fort reservation which I spoke of, but they complained that it was put there without their leave, and that they never had received rent for it.

JOHN G. PRATT.

115 Subscribed and sworn to before me Oct. 24, 1862.

JOHN T. MORTON, *Clerk, &c.*

THE UNITED STATES OF AMERICA, *ss:*

I, John T. Morton, clerk of the circuit court of the United States in and for the district of Kansas, do hereby certify that the foregoing deposition was taken before me at Topeka, in the State of Kansas, on the 24th day of October, 1862, in the presence of and by the consent of the attorneys stated in the caption thereof; that John G. Pratt, the above-named witness, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing deposition was reduced to writing by me in the presence of said witness, and the same was subscribed and sworn to by the said witness before me and in my presence.

In testimony whereof, I do hereto set my hand and affix the seal of said court, at my office at Topeka, this 24th day of October, in the year of our Lord 1862.

[SEAL.]

JOHN T. MORTON,
Clerk, an ex officio Commissioner.

Which said deposition is endorsed as follows:

Filed October 24, 1861. John T. Morton, clerk. Opened by order of court, at the instance and request of solicitor for defendant, Oct. 24, A. D. 1862.

JOHN T. MORTON, *Clerk.*

3. The said defendant then produced, offered, and read the
116 in evidence the following letter from William P. Dole, Commissioner of Indian Affairs, to the said defendant:

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, July 19, 1862.

SIR: In compliance with the request contained in your letter of 10th instant, I herewith transmit copies of such papers (duly authenticated) as are on file in this office and are deemed important in connection with the action which resulted in the survey of the F't Leavenworth military reservation. A paper presented to the Secretary of the Interior, praying for a reversal of the decision of Acting Secretary Moses Kelly and an order for the survey of this land, upon which is endorsed the decision of the present Secretary, overruling the Acting Secretary's decision and ordering the survey of the reservation, was withdrawn from the office by the Secretary and has not as yet been returned, consequently I am unable to furnish copies of that paper and its endorsement.

Very respectfully, your ob't servant,

WM. P. DOLE,
Commissioner.

To J C. STONE, Esq.—*Present.*

Endorsed: "Offered by def't."

4. And the said defendant then produced, offered, and used in evidence the following map:

(Here follows map marked original, page 117.)

118 5. The said defendant then offered, read, and used in evidence the "copies of papers and maps annexed to and made part of his (the said defendant James C. Stone's) answer" to the bill of complaint herein, as exhibits, being as follows, to wit:

Exhibits "A," "B," "C," "F," "L," "M," "P," "R," and "S," and "H," which said exhibits are herein above fully set forth and copied, with the endorsements thereon.

6. And the said defendant then produced, offered, and read in evidence a patent issued by the President of the United States to John Connor, of date January 3d, 1862, and which is in words and figures as follows, to wit:

The United States of America to all to whom these presents shall come, greeting:

Whereas, by the seventh article of the treaty between the United States of America and the Delaware tribe of Indians, made and concluded at Sarcoxieville, on the Delaware reservation, in the then Territory of Kansas, on the thirtieth day of May, one thousand eight hundred and sixty, as ratified on the twenty-second day of August, one thousand eight hundred and sixty, the United States agreed
119 to grant to John Connor, principal chief, six hundred and forty acres of land; and whereas it appears from a return dated the thirty-first day of December, one thousand eight hundred and sixty-one, from the Office of Indian Affairs to the General Land Office, that there have been selected and approved as the reserve of said John Connor, under the treaty stipulations above mentioned, the following described tracts, to wit: The southwest quarter of the northwest quarter of section twenty-three, containing forty acres; the southwest quarter of said section twenty-three, containing one hundred and sixty acres; the southeast quarter of the northeast quarter of section twenty-two, containing forty acres; the east half (of SE. $\frac{1}{4}$) and southwest quarter of the southeast quarter of said section twenty-two, containing one hundred and sixty acres; lots numbered four, five, six, and seven, in section twenty-six, containing together one hundred and eighty-three acres and seventy-three hundredths of an acre; and lots numbered three and four, in section twenty-seven, containing together one hundred and three acres and forty-seven hundredths of an acre, all being in township eight south, of range twenty-two east, of the sixth principal meridian, in the State of Kansas, and
120 containing in the aggregate six hundred and forty-seven acres and twenty hundredths of an acre:

Now, know ye that the United States of America, in consideration of the premises, and in conformity with the provisions as above recited of the aforesaid treaty, have given and granted, and by these presents do give and grant, unto the said John Connor and to his heirs the tracts of land above described: to have and to hold the said tracts, with the appurtenances, unto the said John Connor and to his heirs and assigns forever.

In testimony whereof, I, Abraham Lincoln, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed. Given under my hand, at the city of Washington, the third day of January, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-sixth.

ABRAHAM LINCOLN.

By the President:

[SEAL.] J. N. GRANGER,
Recorder of the General Land Office.

Recorded, vol. 11, pages 522, 523. (Ex'd.)

121 7 And the said defendant then produced, offered, and read in evidence, a patent issued by the President of the United States, to Ne-con-he-con, of date January 3, 1862; which patent is in the words and figures following, to wit:

The United States of America to all to whom these presents shall come, greeting:

Whereas, by the seventh article of the treaty between the United States of America and the Delaware tribe of Indians, made and concluded at Sarcoxieville, on the Delaware reservation, in the then Territory of Kansas, on the thirtieth day of May, one thousand eight hundred and sixty, as ratified on the twenty-second day of August, one thousand eight hundred and sixty, the United States agreed to grant to Ne-con-he-con, chief of the Wolf band, three hundred and twenty acres of land; and whereas it appears from a return dated the thirty-first day of December, one thousand eight hundred and sixty-one, from the Office of Indian Affairs to the General Land Office, that there have been selected and approved as the reserve of the said Ne con-he-con, under the treaty stipulations above mentioned, the following described tracts, to wit: The northeast quarter of section twen-
122 ty-three, containing one hundred and sixty acres; the east half [of NW. ¼] and northwest quarter of the northwest quarter of said section twenty-three, containing one hundred and twenty acres; and lot number two of section twenty-four, containing fifty-two acres; all being in township eight south, of range twenty-two east, of the sixth principal meridian, in the State of Kansas, and containing, in the aggregate, three hundred and thirty-two acres: Now, know ye that the United States of America, in consideration of the premises, and in conformity with the provisions as above recited of the aforesaid treaty, have given and granted, and by these presents do give and grant, unto the said Ne-con-he-con and to his heirs, the tracts of land above described: to have and to hold the said tracts, with the appurtenances, unto the said Ne-con-he-con and to his heirs and assigns forever.

In testimony whereof, I, Abraham Lincoln, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand, at the city of Washington, the third day of January, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-sixth.

ABRAHAM LINCOLN.

By the President:

[SEAL.] J. N. GRANGER,
Recorder of the General Land Office.

Recorded, vol. 11, pages 524, 525. (Ex'd.)

123 8. And the said defendant then produced, offered, and read in evidence, a patent issued by the President of the United States to Henry Tiblow, of date January 3, 1862, which said patent is in words and figures as follows, to wit:

The United States of America to all to whom these presents shall come, greeting:

Whereas, by the seventh article of the treaty between the United States of America and the Delaware tribe of Indians, made and concluded at Sarcoxieville, on the Delaware reservation, in the then Territory of Kansas, on the thirtieth day of May, one thousand eight hundred and sixty, as ratified on the twenty-second day of August, one thousand eight hundred and sixty, the United States agreed to grant to Henry Tiblow, interpreter, three hundred and twenty acres of land; and whereas it appears from a return dated the thirty-first day of December, one thousand eight hundred and sixty-one, from the Office of Indian Affairs to the General Land Office, that there have been selected and approved, as the reserve of said Henry Tiblow, under the treaty stipulations above mentioned, the following described tracts, to wit: The southeast quarter of section twenty-three, containing one hundred and sixty-acres; lots numbered three and four, of section twenty-four, containing, together, one hundred and six acres and eighty hundredths of an acre; and lot numbered four, in section twenty-five, containing sixty-two acres and forty-nine
124 hundredths of an acre; all being in township eight south, of range twenty-two east, of the sixth principal meridian, in the State of Kansas, and containing, in the aggregate, three hundred and twenty-nine acres and twenty-nine hundredths of an acre: Now, know ye that the United States of America, in consideration of the premises, and in conformity with the provisions, as above recited, of the aforesaid treaty, have given and granted, and by these presents do give and grant, unto the said Henry Tiblow, and to his heirs, the tracts of land above described: to have and to hold the said tracts, with the appurtenances, unto the said Henry Tiblow, and to his heirs and assigns, forever.

In testimony whereof, I, Abraham Lincoln, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the third day of January, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-sixth.

ABRAHAM LINCOLN.

By the President:
J. N. GRANGER,
Recorder of the General Land Office.

Recorded, vol. 11, pages 525, 526. (Ex'd.)

Which was all the evidence offered by the said defendant.

125 And on said hearing, to wit, on the said seventh day of November, A. D. 1862, a decree was rendered, signed by the presiding judge, and ordered by the court to be filed, and which said decree is in words and figures as follows, to wit:

Decree.

THE UNITED STATES OF AMERICA
v.
JOHN CONNOR *et al.*
} Decree.

This cause came on to be heard upon the bill, answer of James C. Stone, replication and testimony, and was argued by counsel; the defendants, John Connor, Ne-con-he-con, and Henry Tiblow, although duly served with process, and having entered their appearance, failed to plead answer or demur to said bill; the allegations of said bill are, as to them, taken as true and confessed. Whereupon it is ordered, adjudged, and decreed by the court that the patents mentioned in the bill as having been issued to John Connor, Ne-con-he-con, and Henry Tiblow be, and the same hereby are, set aside, cancelled, and
126 declared null and void; and the said John Connor, Ne-con-he-con, Henry Tiblow, and James C. Stone are hereby divested of all right and interest they, or either of them, had by virtue of said patents in or to the lands therein described.

And it is further ordered that the said James C. Stone, within twenty days from the rising of this court, deliver up the patents aforesaid to the clerk of this court, and that said clerk, immediately upon receiving the same, transmit them properly enveloped to the Commissioner of the General Land Office, at Washington city, District of Columbia, and that before transmitting the same the said clerk shall write in red ink, across the face of each of said patents, the words: "Cancelled and set aside by the United States circuit court for district of Kansas."

And it is further ordered that the defendants pay the costs of this suit, and that, in default thereof, execution issue therefor, and the court finds the value of the property in controversy to exceed the sum of two thousand dollars.

ARCHIBALD WILLIAMS, *Judge.*

And which said decree is endorsed as follows, to wit:

Filed November 7, 1862.

JOHN T. MORTON, *Clerk.*

127 And thereupon, to wit, on the said seventh day of November, A. D. 1862, the said defendant, James C. Stone, filed in open court his demand for an appeal from the said decree, in words and figures as follows, to wit:

Circuit court of the United States for the district of Kansas.

THE UNITED STATES, complainant,
v.
JOHN CONNOR, NE-CON-HE-CON, HENRY TIBLOW, and JAMES C. STONE, defendants.
} In equity.

The above-named defendant, James C. Stone, conceiving himself aggrieved by the final decree of this court, entered, on the seventh

day of November, A. D. 1862, in the above entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States, and he prays that this his appeal may be allowed, and that a transcript of the record, proceedings, and evidence in this cause may be sent to the Supreme Court.

JAMES C. STONE.

And which said demand is endorsed as follows, to wit: "United States *v.* John Connor, Ne-con-he-con, Henry Tiblow, and James C. Stone. Demand for an appeal in the above entitled suit from the circuit court of the United States for the district of Kansas to the Supreme Court of the United States. Filed November 7, 1862.

John T Morton, clerk.

128 And which said appeal, and the said demand therefor, was allowed by the court.

And thereupon the said defendant, James C. Stone, filed in open court his bond for an appeal of this cause to the said Supreme Court of the United States, which said bond is in words and figures as follows, to wit:

Know all men by these presents that we, James C. Stone and Andrew J. Isaacks, are held and firmly bound unto the United States of America in the sum of five hundred dollars, to be paid unto the said United States, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Dated this 7th day of November, in the year of our Lord one thousand eight hundred and sixty-two Whereas the above bounden James C. Stone has appealed to the Supreme Court of the United States from a decree of the circuit court of the United States for the district of Kansas, bearing date the seventh day of November, in the year of our Lord one thousand eight hundred and sixty-two, in a cause in equity, in which the said United States was complainant, and John Connor, Ne-con-he-con,

129 Henry Tiblow, and the said James C. Stone, were defendants:

Now, therefore, the condition of this obligation is such, that if the above-mentioned appellant, James C. Stone, shall prosecute his appeal with effect, and pay all such costs and expenses as shall be awarded against him as such appellant therein, then this obligation to be void; otherwise to remain in full force and effect.

J. C. STONE. [SEAL.]
A. J. ISAACKS. [SEAL.]

Sealed and delivered in presence of—
SAM. A. STINSON.

And which said bond is endorsed as follows, to wit: United States of America *v.* John Connor, Ne-con-he-con, Henry Tiblow, and James C. Stone. Bond filed by James C. Stone to secure his appeal in the above cause from the circuit court of the United States for the district of Kansas to the Supreme Court of the United States.

Circuit court of the United States for the district of Kansas.

THE UNITED STATES, comp't,
v.
JOHN CONNOR, NE-CON-HE CON, HENRY TIBLOW, and JAMES C. STONE, def'ts. } In equity.

130 The within bond is hereby approved.
Nov. 7, 1862.

ARCHIBALD WILLIAMS, *Judge.*

Filed Nov. 7, 1862.

JOHN T. MORTON, *Clerk.*

And thereupon the said defendant, James C. Stone, filed in open court his petition on appeal, in words and figures as follows, to wit:

SUPREME COURT OF THE UNITED STATES, *ss:*

JAMES C. STONE, appellant,
v.
UNITED STATES, appellee.

To the Supreme Court of the United States:

The petition of appeal of the above-named James C. Stone respectfully shows that a decree was lately made in the circuit court of the United States for the district of Kansas, bearing date the seventh day of November, A. D. 1862, in a certain cause in equity pending in said court, wherein the above-named United States is complainant, and the said James C. Stone, John Connor, Ne-con-he-con, and Henry Tiblow are defendants, in and by which said decree it was ordered, adjudged, and decreed that the patents mentioned in said bill of complaint as having been issued to said John Connor, Ne-con-he-
131 con, and Henry Tiblow, were set aside, cancelled, and declared null and void, and that the said John Connor, Ne-con-he-con, Henry Tiblow and James C. Stone were by said decree divested of all right, title, and interest which they or either of them acquired by virtue of said patents in and to the lands therein described, and that the said patents be delivered up to be cancelled, which said decree of said circuit court, as above stated, is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore this appellant respectfully prays that the said decree may be reversed, and that such other decree may be made by this court as shall be agreeable to equity and good conscience, and this appellant may be restored to all things which he has lost by said decree.

And this appellant, as in duty bound, will ever pray.

Dated this seventh day of November, A. D. 1862.

JAMES C. STONE.

SAMUEL A. STINSON, *Solicitor for Comp't.*
THOMAS EWING, *of Counsel.*

132 And which said petition is endorsed in words and figures as follows, to wit:

JAMES C. STONE
v.
UNITED STATES.

Petition on appeal from the circuit court of the United States for the district of Kansas to the Supreme Court of the United States.
Filed November 7, 1862.

JOHN T. MORTON, *Clerk.*

And afterwards, to wit, on the said seventh day of November, A. D. 1862, the following proceedings were had in said cause, and the following entry made of record on the journal of said court in this cause, to wit:

FRIDAY, *November* 7, *A. D.* 1862.

THE UNITED STATES OF AMERICA
v.
JOHN CONNOR, NE-CON-HE-CON, HENRY TIBLOW, and JAMES C. STONE. } In equity.

Now come as well the United States of America, complainants
133 herein, by Robert Crozier, esq., United States district attorney, and W. P. Gambell, esq., their solicitors, as the said defendant James C. Stone, by Thomas Ewing, Samuel A. Stinson, and A. J. Isaacks, esqs., their solicitors, and upon the hearing thereof a decree is rendered herein, signed and ordered by the court to be filed.

Whereupon the said defendant, James C. Stone, by his solicitors, files in open court his demand for an appeal from the said decree to the Supreme Court of the United States, which said appeal is allowed by the court; and it is thereupon ordered by the court that a transcript of the record, proceedings, and evidence in this cause, duly authenticated, be sent to the said Supreme Court of the United States.

And thereupon the said defendant, James C. Stone, files in open court his bond on said appeal, which bond is by the court approved.

And thereupon the said James C. Stone, defendant herein, by his solicitors, files in open court his petition of appeal in this cause.

134 THE UNITED STATES OF AMERICA,
District of Kansas, sct:

I, John T. Morton, clerk of the circuit court of the United States in and for the district of Kansas, do hereby certify the within and foregoing to be a true, full, and complete transcript and copy of the record, proceedings, and evidence in the cause wherein the United States of America are complainants, and John Connor, Ne-con-he-con, Henry Tiblow and James C. Stone are defendants, on the equity side of said court, which was determined and a decree rendered therein on the seventh day of November, in the year of our Lord one thousand

eight hundred and sixty-two, to wit, at the October term, A. D. 1862, of said court, as the same appears of record in my office.

In testimony whereof, I do hereto set my hand and affix the seal of said court, at my office at Topeka, in said district, this twentieth day of November, in the year of our Lord one thousand eight hundred and sixty-two.

[SEAL.]

JOHN T. MORTON, *Clerk.*

OFFICE OF U. S. ATT'Y,
Leavenworth, K's, Nov. 25, 1862.

I certify that I have examined the within transcript and find it correct.

ROB'T CROZIER,
U. S. Attorney.

Filed December 5, 1862.

1529

Supreme Court of the United States.

JAMES C. STONE, Appellant,

vs.

THE UNITED STATES.

BRIEF OF APPELLANT.

Gideon & Pearson, printers, 511 9th street, Washington.

1531

Supreme Court of the United States.

JAMES C. STONE, *Appellant*,
vs.
THE UNITED STATES.

BRIEF OF APPELLANT.

This is an appeal from a decree in equity of the circuit court for the district of Kansas, rendered at the October term, 1862. The suit was instituted in the name of the United States to avoid and cancel three patents issued by the President of the United States for certain lands in Kansas.

In order to a more ready apprehension of the questions presented by the record, a brief summary of the undisputed facts involved is here given.

On the 3d day of October, 1818, a treaty was made between the United States and the Delaware nation of Indian by which the Delawares ceded to the United States all their claim to land in the State of Indiana, and the United States agreed to provide for them a country to reside in, upon the west side of the Mississippi, and to guarantee to them the peaceable possession of the same.—7 U. S. Statutes at Large, p. 188, Art. 1–2.

The Delawares moved from Indiana to the State of Missouri, in accordance with the intent of said treaty.

By a supplemental treaty between the same parties made on the 24th day of September, 1829, it was "agreed upon by the parties that the country in the fork of the Kansas and Missouri rivers, extending up the Kansas river to the Kansas line" (meaning the line of the country reserved to the Kansas Indians), and up the Missouri river to Camp Leavenworth, and thence by a line drawn westwardly, leaving a space ten miles wide north of the Kansas boundary line for an outlet, shall be conveyed and forever secured by the

United States to the Delaware nation, as a permanent residence.—7 Statutes at Large, p. 327, Art. 1.

Camp Leavenworth was occupied in 1827.—See Record, p. 48.

At the date of the supplemental treaty above referred to, Camp Leavenworth was composed of temporary sheds and huts, unoccupied by troops.—Record, p. 31.

On the 3d of September, 1830, Isaac McCoy was appointed by the Secretary of War to survey the tract described in the supplemental treaty hereinbefore referred to. In his report of his survey he says that in the treaty of September 24th, 1829, no provision was made for a military reserve at cantonment Leavenworth, and that it was thought desirable to secure a tract of land for this object. "Accordingly, the survey about the garrison has been made with a view to such reservation, as will be seen by reference to the plat."—See Record, p. 57–58. (admitted as evidence by agrement), Record, p. 31.

The map of McCoy, returned with his report, shows a *direct* line from the Missouri river at Camp Leavenworth, and also the lines run by him with a view to a military reservation.—Map "F."

On the 11th of July, 1854, by treaty, the Delawares ceded, relinquished, and quit-claimed to the United States the northern portion of their reservation, and the United States agreed to have the land so ceded surveyed and sold for the benefit of the Indians.

Statutes at Large, 1853–1854, Art. 1–2–3.

At this time no reservation had been made for military purposes near Camp Leavenworth.—Record, p. 49–50.

August 11, 1854, a military reservation was ordered to be surveyed and laid off. The lines of this reservation did not conform to those run by McCoy. This reservation received the President's approval October 10, 1854.—Record, p. 51–52–31, and Map "H."

The survey under the provisions of the treaty of 1854, conformed to this last reservation, and the lands so surveyed were sold.

May 30th, 1860, another treaty was made between the United States and the Delawares, with a view to an allotment in severally to the members of the tribe of a portion of their reservation, and granting to a certain railroad company the right to purchase all

their land remaining in Kansas after said allotments should be made.—Statutes at Large, 1859–1860, p. 161, Art. 1, 2, and 3.

It was further provided in said treaty (Art. 7), that "in consideration of the long and faithful services of the chiefs of the Delaware nation, and of their interpreter who, is also a member of the nation, it is further agreed that the said chiefs and interpreter shall have allotted to each a tract of land, to be selected by themselves, and shall receive a patent in fee simple therefor from the President of the United States, viz: John Connor, principal chief, six hundred and forty acres; * * * * three hundred and twenty acres; * * * * * Ne-con-he-con, chief of the Wolf band, three hundred and twenty acres, and Hnery Tiblow, interpreter, three hundred and twenty acres; the lines of each tract to conform to the legal subdivisions of survey."

On the 9th of October, 1861, John Connor, Ne-con-he-con, and Henry Tiblow, conveyed by their several deeds of that date, to James C. Stone, this appellant, all their right to the lands allotted to them under article seven of said treaty, and empowered him to select the same.—Record, pp. 17, 18, 19, 20, 86.

Prior to the 8th of November, 1861, the Secretary of the Interior decided that all that portion of the tract surveyed and laid off in 1854 as a military reservation, south of the direct line shown on McCoy's map, belonged to the Delawares, and ordered the same to be surveyed.—Record, pp. 21, 22, 23.

This survey having been had, selections were made in accordance therewith in the names of John Connor, Ne-con-he-con, and Henry Tiblow, see Record, p. 35, and on the 3d of January, 1862, patents were issued to them by the President of the United States for the lands so selected.—Record, pp. 87, 88, 89.

On the 12th of February, 1862, the grantees in the patents conveyed the land described therein to this appellant.—Record, pp. 24, 25, 26, 27, 86.

This land, so patented and conveyed, was included within the lines run by McCoy with a view to a military reservation, and those fixed by the survey of 1854, for the same purpose, and were south of the direct line shown on McCoy's map "F."

On the 11th of June, 1862, the Secretary of the Interior declared those patents void, and ordered their cancelation.—Record, p. 32.

On the 27th of August, 1862, the United States filed in the court below a bill of complaint against this appellant, John Connor, Ne-con-he-con, and Henry Tiblow, charging substantially that the lands described in the patents had been occupied as a military reservation for thirty years, that the patents were never delivered to the patentees, that the patentees never made selection of the lands described in the patents, that the patents were issued without the knowledge or authority of the Secretary of the Interior, and that said lands were not subject to said selection. There is no allegation in the bill that the President was mistaken or deceived, or that the patents were obtained by fraud.—Record, p. 1.

The appellant alone appeared and filed his answer, setting up substantially the matters hereinbefore stated, and matters explanatory of the occupation of the Government, and charged that the land described in the patents was within the limits of the calls of the treaty of 1829, and had always been claimed by the Delawares, and that the same was subject to selection under article 7 of the treaty of 1860.—Record, p. 6.

The decree declared the patents null and void, and ordered them to be delivered up to be canceled.—Record, p. 90.

From this decree Stone appealed to this Court, and now claims—

I.

1st. Neither the knowledge or authority of the Secretary of the Interior was a pre-requisite to the issuing of these patents. The direct supervision and control of patents is with the Commissioner of the General Land Office.

5 Statutes at Large, 107.
Maguire vs. Tyler et al., 1 Black, 195.
3 Opinions of Atty's Gen'l, 95.

These patents were issued under the direction of the Commissioner of the General Land Office.—Record, p. 34.

Any defects or irregularities in the preliminary steps required by law are cured by the patent.

Polk's Lessee vs. Wendell, 9 Cranch, 87.
Hoffnagle vs. Anderson, 7 Wheaton, 212.
Patterson vs. Winn, 11 Wheaton, 383,

Especially should this rule obtain when there is no allegation or proof that the irregularity or defect was induced by the conduct of this appellant.

2d. Article 7 of the treaty of 1861, contains a grant *in presenti* to the allotters therein named, subject to alienation.

Stoddard vs. Chambers, 2 ~~Peters, 318.~~ Howard 284
United States vs. Brooks, 10 Howard, 442.
Doe et al. vs. Wilson, 23 Howard, 458.
Grews ~~Cohn~~ vs. Burcham, 1 Black, 352.

The first conveyances to this appellant were made January 14th, 1861, (Record, p. 17.) prior to the survey and selections, which were made subsequent to November 8th, 1861.—Record, p. 23. These conveyances, as well by necessary implication as express words, carried with them the right of selection.

By their deed subsequent to the issuing of the patents of the land described therein, they ratified and confirmed the selections. This question, in any event, cannot be raised by the Government.

Johnston vs. Home, 32 Miss., (3 George,) 151.

3d. There was a sufficient delivery. The appellant was entitled to receive them as the agents and grantees of the patentees. The mere possession of the parchment does not affect the right of the patentee.

Doe et al. vs. Wilson, 23 Howard, 458.
Lot et al. vs. Prudhomme, 3 Rob. La., 296.

4th. The institution of this suit is an admission by the Government that the act of the Secretary of the Interior declaring the patents void was of no effect. The moment a patent has passed the great seal, it is beyond the reach of the officers of the Govment.

Lot et al. vs. Prudhomme.

II.

Was the land in controversy subject to patent?

1st. Formerly the country reserved to the Delawares by the treaty of 1829, and that north of the same, for a considerable distance, was in the occupation of the Kansas Indians.

In 1825, the Kansas Indians by treaty ceded these lands to the United States.—7 Statutes at Large, 244, Art. 1, 2.

Camp Leavenworth was located in 1827 upon the public lands of the United States. It was designed for shelter, not defence. —Record, p. 31–48. There was no rule or usage which attached adjacent lands to such a camp. Mitchell vs. United States, 9 Peters, 711, and 15 Peters, 52, has been sometimes relied on as a guide in such case. The rule established by the Court in that case was founded on a Spanish usage in regard to fortified places, and even then a purchase from or cession by the Indians was necessary.

It was proved in that case by Governor Folch, who gave the claimants possession of the whole purchase and who was their principal witness, that at the establishment of the Fort at St. Mark's, all the solemn rites and requisites had been observed to obtain from the Indians "*in sale*" all the land necessary for that object, and Benigno de Calderon testifies that the circle of land necessary for *a fortified place* was severed from the land and vested in the Spanish Government.—15 Peters, p. 82. *Then* it became a question on which the Court received proof, what extent of land was necessary for that object, and the Spanish military engineers had fixed it at 1500 varas from the outer wall, which gave full range to the guns of the fort. It strikes us as quite absurb to make *the purchase* of this extent of land from the Indians, for the use of a *fort fortified and armed* a precedent for *seizing*, without purchase, against the guarantee of a solemn treaty, a like quantity of land adjacent to a *few huts*, sometimes vacant, sometimes used merely as a shelter from the weather. The Secretary of War in 1854, when this land was first claimed by the United States, supports his claim solely by this precedent; the evidence was before him that there had been no purchase, no reservation. He declares the reservation *per fas aut nefas*, and makes the "*flag-staff*" at the shanty represent the parapet, and bastions, and fosse of the fortified camp.

The practice of our Government, sanctioned by the decisions of the courts, in making reservations in such cases, is conclusive against the applicability of this rule.

The authority to appropriate a portion of the public domain in

the vicinity of military posts to their use, is conceded to the President as an incident to his power to establish such posts, but some actual appropriation is necessary; the establishment of a *camp* does not *propria vigore* also establish a military reservation about it.—Wilcox vs. Jackson, 13 Peters, 498.

2d. When the treaty of 1829 was made, where was Camp Leavenworth? The map of Isaac McCoy shows that it was *north* of the main and direct line which he run westwardly from the Missouri river—Map "F." In 1854, the *camp* was still north of this line—Map "E." This map shows only a warehouse and farm buildings south of the line, and their existence in 1829 is negatived by the admission that the camp consisted of temporary cabins and sheds. The only thing at the date of the treaty to mark the site of the camp was this collection of cabins, *to* this the treaty gave the Delawares the land.

By resolution of the Senate of the United States ratifying the treaty of 1829, the President was directed to employ a surveyor to run the lines and establish the boundaries of the reservation ceded to the Delawares by the treaty.—Record, p. 56. In accordance with this resolution, Isaac McCoy was appointed.—Record, p. 57. Accompanying his appointment was a sketch intended for the surveyor's guidance, drawn by the Secretary of War.—Map "A." This map treats the point of departure from the Missouri river as so marked and defined by the camp as to need no other monument. It is not for the Government to ask the appellant here to show that the surveyor of its own appointment did not violate his duty and instructions. "To" is a word of exclusion, and at least the *presumption* is, until the contrary is shown, that the main and direct line did not include the camp or any part of it, but conformed to the calls of the treaty and the surveyor's instructions.

3d. It is provided by the resolution of the Senate above referred to, that the surveyor shall be accompanied by an agent of the Delawares, and that when the President is satisfied that the boundaries, as fixed by the surveyor, have been concurred in by such agent, he shall approve the proceedings under his signature and seal of office, and the boundaries so fixed shall be conclusive upon the parties to the treaty. There is no evidence that the

survey of McCoy ever received the approval of the President. —Record, p. 57. If the proceedings had been so approved, in so far as the survey departed from the natural and artificial objects fixed as calls in the treaty, the same would have been without force or effect, and not within the purview of the resolution. This was the contemporaneous construction of the treaty and resolution as is shown by the instructions of the Secretary of War to the surveyor. The line fixed by the survey of McCoy in 1830, is the direct line, and the survey, "with a view to a reservation," was merely commendatory and experimental, as appear from the map and report of McCoy.

Even had the proceedings received the approval of the President, the approval must now be held to relate to the survey authorized to be made, rather than that confessedly made without authority, and in direct disregard of the calls of the treaty.

Whenever the United States have sought to reserve the right to establish military posts upon lands granted to an Indian tribe, the reservation has been distinctly made in the treaty containing the grant.—7 Statutes at Large, 15, Art. 3; 17, Art. 4–7–8; 22, Art. 3; 24, Art. 3; 30, Art. 10; 33, Art. 1–2; 51, Art. 4; 56, Art. 4; 68, Art 3; 86, Art. 11; 93, Art 1; 314, Art. 9.

In 1832, the United States by treaty, ceded to the Kickapoo Indians, a portion of country immediately north of the reservation of the Delawares, but prescribed the boundaries of the ceded country so as to exclude a large area northwardly and westwardly, from Camp Leavenworth. This express reservation is at least strong presumptive evidence that no such reservation was implied or intended in the treaty with the Delawares of 1829.

7 Statutes at Large, 389–391.

5th. That no reservation existed or was made of land south of Camp Leavenworth for military purposes prior to 1854, is conclusively shown by the record, pp. 50, 51, 42. A reservation had been made for the use of the post east of the Missouri river prior to this time. The tract upon which this reservation was made, was also of the lands ceded by the Kansas Indians, in 1825. The tract upon which the post or camp was located and the country adjacent north and westerwardly, was still public land, and there was no necessity for a reservation until the lands were authorized to

be surveyed and sold according to law. Yet, if such survey and sale had been made under the general law authorizing the sales of public lands in Kansas, prior to any military reservation, the Government would occupy towards the patentee the same position which it occupied towards the Delawares after the treaty of 1829.

The experimental survey of McCoy, with a view to a reservation, according to his report, included the lands last referred to, and reserved them as much as it reserved the lands in controversy.

6th. The faith and dignity of the Government alike forbid that any claim should be made on its behalf to the lands in controversy by reason of occupancy and possession. In no case can the United States acquire title by pre-emption. Here the Indians could not sue—the Government could not be sued. The peculiarly fiduciary relations of the Government to the Indians, and their condition of absolute dependence, would in any event destroy the presumption of a grant which might in other cases arise from such possession unexplained. Here, however, the Indians always asserted their right to the lands. The Government paid them rent.—Record, p. 84. When first their right to these lands was challenged, (in 1854,) the Commissioner of Indian Affairs claimed that they should be sold under the provisions of the treaty of 1854.—Record, p. 55. This claim, so made, was resisted by the War Department upon grounds sustained neither by the law or the facts in the case.—Record, p. 61.

7th. From 1829 to 1854 the right of occupancy was in the Indians, and the fee in the Government. The fee so held was but little more than a reservation to the Government of the sole power to purchase the lands, a check upon their alienation by the Indians. By the treaty of 1854, the Delawares ceded, relinquished, and quit-claimed to the United States a part of their reservation, including (if the construction here claimed of the treaty of 1829 be correct) the lands in controversy. The United States agreed to have the ceded country surveyed and sold under the direction of the President, and to pay to the Delawares the proceeds of such sale, after deducting the cost of surveying, managing and selling the same. Through the United States alone could the Indians sell their lands. For the purpose, then, of merging

the right of occupancy and the fee, and in order that the lands might be sold, the Indians conveyed the one in trust to the Government, and the Government made a declaration of trust as to the other for the benefit of the Indians. The Government took no beneficial interest in these lands under the treaty. It paid nothing for them. It was a mere conduit pipe through which alone the interest of the Indians could pass into grantees other than the Government. The interest of the Indians in the country ceded was of a higher character than before the cession. The Government had relinquished whatever of beneficial interest it might have had in the lands, and retained only "a mere naked trust, or power to dispose of the thing granted, and to apply the proceeds arising out of it to the use and benefit of the" Indians. This is the construction which the treaty must receive when construed as an entirety, though the granting clause might, if unexplained, convey an estate or interest in the lands granted.—Rice vs. Railroad Company, 1 Black, 378. In the same treaty, (Art. 3,) the Delawares ceded the "outlet" to Government in consideration of ten thousand dollars, parting thereby with all their interest in the same. This is made an independent conveyance, thereby indicating that the character of the stipulations in regard to the "outlet" was different from those concerning the other lands.

8th. Before the survey and sale contemplated by the treaty were made, the War Department intervened, and acknowledging that no military reservation had theretofore been made on the *west* side of the Missouri, *ordered* a tract to be surveyed and set off for that purpose. This was done. If this reservation included lands embraced in the treaties of 1827 and 1854, it would be a gross breach of national faith on the part of the Government to insist upon its validity. The treaty of 1829 pledged "the faith of the the Government to guarantee to the Delaware nation forever the quiet and peaceable possession, and undisturbed enjoyment of the same, against the claims and assaults of all and every other people whatever." Is there an implied reservation in the treaty that the Government may at any time resume its grant in violation of this solemn treaty stipulation? This doctrine has, in times of civil commotion, found countenance in England, but never in this country. The *dicta* of the courts, which at the first impres-

sion might seem to assert the right of the Government to enter upon and occupy Indian lands for military and other purposes without the consent of the Indians, are, as has been shown, applicable only to the country roamed over by wandering tribes as a hunting ground, and claimed by them under their aboriginal right. The practice of the Government, in such case, specifically to reserve in the treaties land for public purposes, and even the right to make roads over the ceded country, is conclusive against the assumption of any such reservation arising by implication. The attempted reservation in this case was an executive, not a legislative act, and is in no sense the act of Government unless warranted by law. In speaking of the usufructuary right of the Indians, Attorney-General Butler says, "that right cannot lawfully be interrupted by the Government."—3 Opinions of Atty's Gen'l, 206.

At the time of this attempted appropriation, the Government stood in the double relation of trustee and guardian to the Indians, and having submitted itself to the jurisdiction of this Court, is to be treated as an individual. Only the most positive and direct law would induce a court of equity to sustain an appropriation of the property of the ward by the guardian, or that of the cestui que trust by the trustee.

9th. By the treaty of 1860, in which the allotments were made to the grantors of this appellant, it is provided that after the tracts in severalty, and those for special objects named therein, shall be selected and set apart, then upon payment therefor by the Leavenworth, Pawnee and Western Railroad Company, the United States shall issue to said company a patent "for all *their* land remaining in Kansas," *i. e.*, land of the Delawares. If by "*their* land" is meant land to which the Indians held the fee, then they could have no land. If this expression means land in which the Delawares had a beneficial interest, then the unsold portion of that ceded by the treaty of 1854 is more truly, both at law and in equity, "*their* land," than that in which they held the mere usufructuary right. It was either the land of the Delawares or that of the United States. If the property of the Government, it must have become so by some legal appropriation, not by the treaty of 1854.

By the treaty of 1860, (Art. 8,) it is declared that "any stipulation in former treaties inconsistent with those embraced in the foregoing articles shall be of no force or effect." Thereby abrogating the treaty of 1854 as to "*their* lands." These lands were then a part of the subject-matter of the treaty. That they were so regarded by the treaty-making power, is evidenced by the subsequent action of the Senate. By the treaty of 1860, the railroad company were to pay for the lands in money within a few months. It was sought to modify these terms so as to extend the time of payment, and a treaty was made in 1861 touching this matter. The Senate ratified the treaty with this proviso:—

"*Provided*, That the provisions of this treaty shall not be held to apply to any land not heretofore, surveyed and appraised, and not included within the limits of said reserve, *nor any lands included in any fort or reservation for military purposes.*"—Statutes at Large, 2869–1861, 241.

This treaty does not expressly or by implication attempt to touch the allotments made by the treaty of 1860.

10th. The language of the treaty of 1860 is, "there shall be allotted" to the grantees, to be selected by themselves, so many acres of land. There are no words of limitation upon this power of selection. It is made the duty of the President to issue patents for the lands so selected. This duty is devolved by law upon the Commissioner of the General Land Office, under the direction of the President. The selections having been made, it was the duty of the Commissioner to pass upon them, under the direction of the President, and by procuring the patent to issue, make the allotment complete, or refuse to approve and ratify the selection. The interests of the Delawares were under the supervision of the Commissioner of Indian Affairs. These selections were made they received the approval of the Commissioner of Indian Affairs, and were sanctioned by the President and the Commissioner of the General Land Office, by the issuing the patents.—(See recitals of patents, Record, p. 88.)

We concede that if the lands in controversy included within the boundaries of any military reservation, or if their issue was induced by fraud or mistake, then the patents would be either void or voidable. The principal case in which the jurisdiction of

* The duty of the President in regard to these patents involved a construction of the treaty. The patents were not intended to follow every selection which the caprice of the claimants might suggest. The selections having been made, and patents applied for, it became the duty of the officer, to whom the law gave this matter in charge, to "try and determine" whether the selections were within the purview of the treaty. If this question had been decided adversely to the claimants, the patents must have been refused. It is the decision of this, and similar questions, which we claim cannot be disregarded or reviewed.

If the lands in controversy had been withdrawn from the control of the executive, so that they were not subject to patent under existing laws, as in the case of military reservations, then the decision just noted would be void, because this judicial discretion would have been exercised in regard to a subject matter over which the executive had no jurisdiction. If through fraud or mistake this discretion had not been exercised, then the fraud or mistake being clearly proved, equity would disregard the decision and avoid the patents. If however the executive discretion has been exercised in regard to a subject matter within the scope of its jurisdiction, the decision is conclusive upon the government. The question which the executive was to pass upon in this, as in all similar cases, was between the claimant and the government; and having decided that under the law the government should part with its title to the premises in controversy, and having evidenced that decision by patents, we submit that this decision can only be assailed now for lack of jurisdiction in the officer making it or for some reason similar to those which would warrant a court of equity in interfering with the judgment of a court of law.

chancery is affirmed to annul patents at the suit of the sovereign, Attorney-General vs. Jane, 2 Reports in Chancery, is put upon the ground of fraud practiced by the patentee. This is believed to be the only ground upon which the courts of chancery have heretofore taken jurisdiction in such case. But where the land is subject to patent, and the Commissioner of the General Land Office and the President in executing the provisions of a treaty, decide, as in this case, that the land is subject to patent under the provisions of the treaty, the Government is concluded. This discretion the Government vested in its officers, and it having been exercised fairly and honestly, the decision is conclusive upon the Government. When no wrong is done to an individual, "it is supposed the acts of the executive within the general scope of its powers and by virtue of law, cannot be removed, though to some extent the letter of the law may not have been followed. There is no court of errors in which executive decisions that do not affect individual rights can be reversed."—United States vs. Lytle et al., 5 McLean, 9; Astrom et al. vs. Hammond, 3 McLean, 107; Maguire vs. Tyler et al.; Doe et al. vs. Wilson.

Any other doctrine would transfer the decision of every question of boundary and location which might arise in the sale of the public lands from the land office to the courts, and reduce letters patents under the great seal from the highest to the lowest grade of evidence of title.

While the mere issuing of the patent has been treated by the courts as a purely ministerial act, yet, the patent when issued, becomes conclusive evidence of all the matters essential to the legality of its issue. These matters many of them appeal to the judicial discretion of the officer who is to decide whether the patent shall issue as asked. It is for this reason that it is now claimed that the recitals of the patents are conclusive evidence that these lands were within the country from which the allottees were to select.—Cross vs. Burcham.

Though confident that the position here taken is correct, we believe we have shown that it would now be the duty of the executive to issue these patents if it had not already been done, that the land covered by them was subject to the selections.

There are no questions of public policy in the case. Maps

"M" and "E" show that the occupation of the lands in controversy by the appellant will not interfere in any way with the use or occupation of Fort (camp) Leavenworth for military purposes. None of the buildings or improvements erected by the Government, except the farm house, remote from the post, are included within the lands claimed by the appellant.

We ask, then, that the judgment of the court below be reversed, and that such a decree be ordered to be entered as will conclude this controversy, and affirm the title to the lands in question in the appellant.

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J. Counsel

